Winter 2015

Poverty, Dignity, and Public Housing

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POVERTY, DIGNITY, AND PUBLIC HOUSING

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* Assistant Professor of Law and Director of the Community Development Clinic at the University of Baltimore School of Law. I thank the University of Baltimore School of Law; my excellent research assistants, Nicholas Fearnow and Ryan Horka; Michele Gilman, Michelle Ewert, Susan Bennett, Audrey McFarlane, Odeana Neal, Cassandra Havard, Erika Wilson, Sabrina Balgamwalla, Ezra Rosser, Michael Pinard, and Joe Tulman; and the organizers and participants of the Mid-Atlantic Clinical Writing Workshop, the Mid-Atlantic People of Color Legal Scholarship Conference Works-in-Progress Workshop, the Clinical Law Review Writers' Workshop, the University of Baltimore Faculty Research and Development Program, the "Present and Future of the Civil Rights Movement" conference, and the ClassCrits VIII conference, "Emerging Coalitions: Challenging the Structures of Inequality."

I. INTRODUCTION

Antipoverty efforts are persistently subverted by broad societal contempt for poor people. The belief that poor people are morally and behaviorally inferior, and that their personal failings are the cause of their own poverty, is a staple of American opinion polls and political rhetoric.[1] This presumption is so widespread that it even permeates antipoverty programs, which treat poor people with disdain even as they offer aid and assistance.

Income discrimination creates not just social stigma, but legal inequalities. The Supreme Court recognized some forty years ago that welfare law promoted wealth-based Constitutional inequalities, and responded by invoking the doctrines of equal protection and due process to protect the rights of the poor.[2] The Court grounded these rulings in an affirmation of the human dignity of all people, regardless of wealth. Yet these dignitary rulings have not prevented societal discrimination against the poor from flourishing. This societal discrimination has consistently undermined antipoverty initiatives and turned programs meant to alleviate suffering into tools of subordination.

Legal scholars have thoughtfully explored these issues in the context of American welfare law. Public housing law has many parallels to welfare law and, as this article discusses, adds a new dimension to this area of study, as new and innovative forms of support for the dignity of poor people have emerged in public housing law in recent decades. Through mobilization, litigation, and law reform, public housing residents have secured certain legal rights to self-expression and autonomy that extend far beyond the dignitary rights guaranteed by the Constitution. These dignitary innovations include mechanisms of "voice," which give residents the right to engage with

1. *See infra*, Part II.
2. *See infra*, Part III.

the government on matters impacting their lives, and mechanisms of "choice," which offer residents certain controls over their housing.

Initiatives of voice and choice can be understood as successful efforts by public housing residents to claim rights to greater autonomy and self-determination. The dignitary rights promised by voice and choice, however, have been consistently undermined by the persistent belief in the moral and behavioral inferiority of poor people. This article demonstrates how this pattern has repeated itself in public housing policy over many decades, and how it continues to shape its future. It explores the ways in which this approach misplaces the burden of solving poverty on the individual, deflects attention away from structural causes of poverty, validates governmental inaction and negligence, and obstructs effective policymaking.

Part II analyzes the widespread belief that poor people are morally deficient and responsible for their own poverty, popularly known as the "culture of poverty" theory and referred to here as "culturalism." In addition, Part II explores the origins and implications of this belief.

Part III analyzes the Supreme Court's response to culturalism as embodied in the welfare rights and due process cases of the late 1960s and early 1970s. It explains how these rulings sought to affirm the dignity of aid recipients through legal doctrine, how these doctrines have been applied in public housing, and how they have proven inadequate to shield the poor from culturalism.

Part IV discusses how resident activism has extended the dignitary principles espoused by the Court by creating new legal supports for the poor within the public housing program. Certain resident-driven initiatives empowered residents to exercise greater self-determination and autonomy and have been codified in federal law, providing residents across the country with expanded rights to "voice" and "choice." These rights, however, have been consistently subverted by culturalist ideology. Specifically, rights to participatory governance are persistently undermined by the devaluation of the opinions of poor people, and rights to self-management have been used to seek moral reformation of the poor rather than to address their housing needs.

Part V turns to housing mobility, a mechanism of "choice" likely to be a significant component of the public housing program in the future. Part V explains mobility's origins as rooted in dignitary rights, but argues that a culturalist reading of mobility threatens to subvert its original purposes, just as with other initiatives. Mobility is at risk of being appropriated by culturalists to devalue poor people and

communities, and to shift the responsibility for addressing poverty from the government to poor individuals. Part V outlines concrete recommendations for preventing such distortion as policymakers move forward with designing and implementing mobility programs on a national scale. The article concludes with a few thoughts on resisting culturalism more broadly, suggesting that while specific changes in the law are necessary, overcoming culturalism will require even greater efforts.

II. CULTURALISM AND ITS HARMS

It is widely believed that poor people are responsible for their own poverty. Personal failings of character, morality, and ways of thinking are thought to lead to flawed behavior, which in turn causes unemployment, impoverishment, and government expense.[3] Degrading labels such as "white trash" or "welfare queen" connote the belief that poverty results from character flaws such as laziness or lack of ambition, from a proclivity to violate moral norms, and from unseemly life choices.[4] Idealized notions about the strength of American individualism,[5] reflected in rags-to-riches stories of those who have "pulled themselves up by their bootstraps" in the "land of

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3. *See, e.g.*, JOEL F. HANDLER, REFORMING THE POOR (1972) (describing theories of poverty and welfare programs that are derived from and also fuel moral distinctions made between categories of poor people); JOEL F. HANDLER & YEHESKEL HASENFELD, WE THE POOR PEOPLE: WORK, POVERTY, AND WELFARE (1997) 9–10 (describing and criticizing theories and stereotypes that claim that poverty is caused by moral failings) [hereinafter Handler & Hasenfeld, *We the Poor People*]; Martha Fineman, *Images of Mothers in Poverty Discourse*, 1991 DUKE L.J. 274, 284 (1991) [hereinafter Fineman, *Images of Mothers*]; Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389, 453 (2014); Mark R. Rank, *Toward a New Understanding of American Poverty*, 20 WASH. U. J.L. & POL'Y 17, 20–21 (2006).

4. *See* Rank, *supra* note 3; *see also* Michele Estrin Gilman, *Poverty and Communitarianism: Toward a Community-Based Welfare System*, 66 U. PITT. L. REV. 721, 745 (2005); Thomas H. Koenig & Michael L. Rustad, *Digital Scarlet Letters: Social Media Stigmatization of the Poor and What Can Be Done*, 93 NEB. L. REV. 592, 598 (2015).

5. *See generally* Jon Hanson & David Yosifon, *The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture*, 152 U. PA. L. REV. 129, 260–61 (2003) ("Americans have long seen their individualism as . . . the most significant factor behind their relative economic and political success," although "the individualism is as much the consequence of the existence of a valuable situation."); MARTHA FINEMAN, THE AUTONOMY MYTH 7–30 (2004) (describing individual autonomy and freedom from government action as one of the foundational myths of American society).

opportunity," reinforce the idea that a person can overcome hardship as long as she strives hard enough to do so.[6] Consequently, a person who does not overcome poverty through determination and effort is believed to be personally deficient.

These ideas have roots at least as far back as Elizabethan England,[7] when welfare policy favored the "deserving poor," or those who were unable to work because of age, disability, or other circumstances viewed as out of the individual's control.[8] The deserving poor were distinguished from the "undeserving" able-bodied, who presumably could work but did not.[9]

From their inception, American poverty programs carried forward this deserving/undeserving dichotomy.[10] Welfare programs of the 1830s separated out physically or mentally incapacitated people as not at fault for their impoverishment.[11] Civil War era programs focused on providing for orphans, widows, and veterans as the deserving victims and heroes of war.[12] New Deal aid programs singled out the "worthy"[13] through the Social Security Act, which supported the elderly, and through the public housing program, which at first

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6. STEPHEN J. MCNAMEE & ROBERT K. MILLER, JR., THE MERITOCRACY MYTH (2004); *see also* Mario Luis Small et. al., *Reconsidering Culture and Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 9 (2010) (positing that beliefs in American individualism may actually hinder economic and other gains, since social networks contribute significantly to one's ability to secure jobs and other benefits).

7. *See* Mark Neal Aaronson, *Scapegoating the Poor: Welfare Reform All Over Again and the Undermining of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213, 222 (1996).

8. Mark Neal Aaronson, *Representing the Poor: Legal Advocacy and Welfare Reform During Reagan's Gubernatorial Years*, 64 HASTINGS L.J. 933, 985 (2013) [hereinafter Aaronson, *Representing the Poor*].

9. Lucie E. White, *No Exit: Rethinking "Welfare Dependency" From a Different Ground*, 81 GEO. L.J. 1961, 1963 (1993).

10. *See* Joel Handler & Yeheskel Hasenfeld, THE MORAL CONSTRUCTION OF POVERTY (1991); Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER SOC. POL'Y & L. 247, 256–60 (2014) [hereinafter Gilman, *Welfare Queen*].

11. *See* Handler & Hasenfeld, *We the Poor People*, *supra* note 3, at 26.

12. *Id.*

13. Aaronson, *Representing the Poor*, *supra* note 8, at 985; *see also* William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 FORDHAM L. REV. 1821, 1839 (2001).

supported middle-class workers who had lost their jobs in the Great Depression[14] and later housed returning World War II veterans.[15]

In contrast to the "worthy" poor, the "unworthy" or "undeserving" poor have been treated differently. Those deemed "undeserving" include the seemingly able who do not work,[16] non-widowed single mothers,[17] and blacks and other racial minorities.[18] The undeserving poor have been routinely excluded from aid or, to the extent aid is given, viewed as causing their own poverty through their "bad" behavior. Consequently, the state has sought to use aid programs to contain and control how "undeserving" poor people live.[19] Just as nineteenth-century American moral reformers sought to improve the morality of the poor,[20] welfare, food stamp, and Medicaid programs have conditioned aid on meeting moral and behavioral norms,[21] especially as these programs supported increasing numbers of the stigmatized poor. In the second half of the twentieth-century, the

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14. *See, e.g.*, Shelby D. Green, *The Public Housing Tenancy: Variations on the Common Law That Give Security of Tenure and Control*, 43 CATH. U. L. REV. 681, 688–89 (1994) (describing the new, visible, and undeserving class of poor people that grew as a result of the Great Depression, and the Housing Act's role in relieving this class' suffering); Michael S. FitzPatrick, Note, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. ON POVERTY L. & POL'Y 421, 428 (2000).

15. *See* Florence Wagman Roisman, *National Ingratitude: The Egregious Deficiencies of the United States' Housing Programs for Veterans and the "Public Scandal" of Veterans' Homelessness*, 38 IND. L. REV. 103, 127–33 (2005).

16. *See, e.g.*, JOEL F. HANDLER, REFORMING THE POOR: WELFARE POLICY, FEDERALISM, AND MORALITY 2 (1972); Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317, 331 (2014) [hereinafter Bach, *Hyperregulatory State*].

17. *See, e.g.*, Fineman, *supra* note 3.

18. *See, e.g.*, JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY (1994) (tracing how racial issues have shaped the American welfare state throughout its history); Mary Pattillo, *Making Fair (Public) Housing Claims in a Post-Racism Legal Context*, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 215, 220 (describing the violent reaction to the placement of black veterans in white neighborhoods in Chicago public housing).

19. Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 720–21 (1992) ("[T]he current 'welfare reform' proposals condition . . . eligibility on conformity with putative moral norms of society . . . . The idea behind all of these [welfare reform] projects is the same: only those women and children who conform to majoritarian middle-class values deserve government assistance benefits.").

20. *See* Gene R. Nichol, *Poverty and Equality: A Distant Mirror*, 100 MICH. L. REV. 1661, 1663 (2002).

21. *See, e.g.*, HANDLER, REFORMING THE POOR, *supra* note 16, at 2; Bach, *Hyperregulatory State*, *supra* note 16, at 331.

"undeserving" poor sought benefits in unprecedented numbers due to the migration of black Americans to northern cities, widespread urban unemployment, an increase in female-headed families, and enrollment drives encouraged through the War on Poverty.[22] As the numbers grew, the government used food and shelter as bargaining chips to control how poor people lived their private lives. For example, states asked single mothers, most of whom were black, to sacrifice fundamental liberties and privacies in exchange for government aid:

> Between 1954 and 1960 at least nineteen states attempted to deny ADC ["Aid to Dependent Children"] to illegitimate children. In a similar vein, many states proposed laws conditioning children's ADC payments on the mother's behavior: her agreement to file nonsupport paperwork, establish the paternity of the child, cease "illicit" relationships, undergo sterilization, accept available employment, participate in rehabilitative treatment, and submit to fingerprinting.[23]

As the number of welfare recipients increased from two million in 1950 to nine million in 1970,[24] concerted efforts were made to protect the dignity of the poor through the expansion of civil rights, welfare rights, due process, and other avenues.[25] These efforts produced some crucial changes in how government treated aid recipients, but culturalism continued to flourish. President Ronald Reagan's revival of the narrative of the "welfare queen,"[26] understood to refer to "an urban, black, teenage mother, who continually has children to increase her benefits and who just lies around all day in public housing waiting for her check to come,"[27] epitomizes culturalist thinking. Culturalist ideology continued to shape national policy in the 1990s, as welfare

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22. *See* Handler & Hasenfeld, *We the Poor People*, *supra* note 3, at 31–32; Williams, *supra* note 19, at 724–25.

23. Karen M. Tani, *Administrative Equal Protection: Federalism, the Fourteenth Amendment, and the Rights of the Poor*, 100 CORNELL L. REV. 825, 864–65 (2015) (citations omitted).

24. Handler, *We the Poor People*, *supra* note 3, at 31.

25. *See, e.g.*, Forbath, *supra* note 13, at 1841–67; FELICIA KORNBLUH, THE BATTLE FOR WELFARE RIGHTS: POLITICS AND POVERTY IN MODERN AMERICA (2007) (describing the history of welfare rights activism in America in the 1960s and early 1970s).

26. Gilman, *Welfare Queen*, *supra* note 10, at 249; Bridgette Baldwin, *Stratification of the Welfare Poor: Intersections of Gender, Race, & "Worthiness" in Poverty Discourse and Policy*, 6 MOD. AM. 4, 5 (2010)

27. *Dethroning the Welfare Queen: The Rhetoric of Reform*, 107 HARV. L. REV. 2013, 2019 (1994).

reform focused on familiar themes of morality and behavioral control by putting aid recipients to work[28] and reducing sexual behavior outside of marriage.[29] Today's programs continue to treat poor people as responsible for poverty's harms and as needing careful government oversight.[30]

Culturalist ideology has a superficial simplicity. It suggests that social regulation is a fair trade for government support: if you want a free ride, you must play by the state's rules. The subordinating implications of this premise, however, are complex. Culturalism stigmatizes the acceptance of government support by the poor as pernicious and irresponsible, while similar behavior among the more affluent is widely acceptable. For example, mortgage interest and property tax deductions[31] are government benefits that, like welfare, enable people to buy what they could not otherwise afford, yet impose no stigma or moral constraints. Moreover, although the state does have a responsibility to encourage socially responsible behavior, other forms of regulation like business or criminal regulation are inherently different from welfare regulation, which conditions the relief of human suffering on conformance to moral and social norms and on the sacrifice of fundamental personal freedoms.[32]

In singling out the poor as morally and behaviorally deficient, culturalism also provides thin cover for the perpetuation of noxious

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28. *See, e.g.*, Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions From Welfare "Reform," Family, and Criminal Law*, 83 CORNELL L. REV. 688, 734 (1998) (noting that from 1970 forward, various welfare programs focused on tying welfare benefits to employment); Elizabeth G. Patterson, *Mission Dissonance in the TANF Program: Of Work, Self-Sufficiency, Reciprocity, and the Work Participation Rate*, 6 HARV. L. & POL'Y REV. 369 (2012); Gilman, *Welfare Queen*, *supra* note 10.

29. *See, e.g.*, Wendy Chavkin et al., *Sex, Reproduction and Welfare Reform*, 7 GEO. J. ON POVERTY L. & POL'Y 379 (2000) (stating that various provisions of the 1996 welfare reform act cap welfare and Medicaid benefits to family size and provide incentives to states who show a decrease in out of wedlock births without an accompanying increase in abortion rates); Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 122 (2002).

30. *See supra* Part III.C.; *see also* Bach, *Hyperregulatory State*, *supra* note 16.

31. *See, e.g.*, Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 ARIZ. ST. L.J. 1347, 1350 (2000).

32. *See, e.g.*, Dandridge v. Williams, 397 U.S. 471 (1970) (Marshall, J., dissenting) (suggesting that the rational basis test, used to assess the constitutionality of business regulation, is an inappropriate standard to use when assessing a state's refusal to support the "vital" needs of impoverished children).

racial and gender stereotypes. While discrimination based on race, gender, and income are distinct and not coextensive, they frequently overlap.[33] Poor people are disproportionately non-white with single, female heads of households, and prejudice against each of these characteristics is frequently compounded. For example, non-whites, and especially black Americans, are considered particularly "undeserving" among the poor.[34] Single mothers are also deemed especially undeserving because they violate multiple gender-based values favoring marriage and non-working mothers.[35]

Culturalism can be seen as an expression of white, middle-class "cultural imperialism," which "universalizes a dominant group's experience, culture, and meanings in a way that renders the perspective of another group invisible while simultaneously marking them as the deviant and inferior Other."[36] These messages can be so powerful that even those who they denigrate may subscribe to their beliefs.[37] This may in fact be part of their purpose; as Stephen J. McNamee and Robert K. Miller, Jr. write,

> Ideology provides a socially acceptable explanation for the kind and extent of inequality within society . . . . For a system of inequality to be stable, those who have more must convince those who have less that the distribution of who gets what is fair, just, proper, or the natural order of things. The greater the level of

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33. This article primarily refers to income discrimination, but by doing so does not intend to conflate income, race, and gender discrimination, nor does it intend to overlook the intersectionalities among them or present income discrimination as unrelated to race or gender bias.

34. *See, e.g.*, MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 5 (1999) (noting that white cynical view regarding welfare is paralleled by stereotypes regarding African Americans).

35. *See id.*; Fineman, *supra* note 3; Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare 1890–1935*; MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN (1989) ("[T]he ideology of women's roles . . . became encoded within the rules and regulations of the welfare state, where it, along with the work ethic, has shaped public policy and regulated the lives of thousands of women.").

36. Audrey McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 342–43 (1999).

37. *See* WILSON JULIUS WILSON, MORE THAN JUST RACE: BEING BLACK AND POOR IN THE INNER CITY (2009) 82–85 (discussing research indicating that many poor people agree with culturist beliefs, including that "America is a land of opportunity where anybody can get ahead, and that individuals get pretty much what they deserve").

> inequality, the more compelling and persuasive these explanations must appear to be.[38]

In these and other ways, culturalism is deeply subordinating. It expresses both personalized condemnation, since failure stems from the character of the individual, as well as condemnation of broader "cultural" values, since deficiencies are also thought to be collectively fostered among groups as a shared culture.[39] Personal and cultural failings are presumed to be nearly universal and to be intrinsic, persistent, and self-perpetuating.[40] At the same time, each individual is presumed to have irresponsibly chosen to be poor, and to have the

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38. McNamee and Miller, *supra* note 6; *see also* JOEL F. HANDLER & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY, 11 (1991) (describing social welfare policy as "fundamentally a set of symbols that try to differentiate between the deserving and undeserving poor in order to uphold such dominant values as the work ethic and family, gender, race, and ethnic relations. In this sense, social welfare policy is targeted not only at the poor, but equally at the nonpoor.").

39. Popular culturalism, as discussed in this article, is distinguishable from the scholarly work of sociologists who have articulated nuanced understandings of what "culture" means, how it may affect those in poverty, and how perspectives on culture have shaped American social policy. *See, e.g.*, Wilson, *supra* note 37 (discussing the cultural significance of being black and poor in a city); Alford A. Young Jr., *New Life for an Old Concept: Frame Analysis and the Reinvigoration of Studies in Culture and Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 53, 55 (2010); Stephen Vaisey, *What People Want: Rethinking Poverty, Culture, and Educational Attainment*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 75 (2010). The recent work of William Julius Wilson, for example, suggests that culture encompasses not only "group norms, values, and attitudes toward family and work, [but also] cultural repertoires (habits, styles, and skills) and the micro-level processes of meaning making and decision making—that is, the way individuals in particular groups, communities, or societies develop an understanding of how the world works and makes decisions based on that understanding." *See* Wilson, *supra* note 37, at 151. Wilson argues that both cultural forces and structural forces trap people in poverty, but that structural causes are primary and, moreover, that structural disadvantages are why cultural disadvantages develop. *See id.* at 133–35, 152 ("Culture matters, but I would have to say that it does not matter nearly as much as social structure. Culture is less causally autonomous than social structure, more often playing a mediating role in determining individuals' life outcomes.").

40. *See, e.g.*, Oscar Lewis, *The Culture of Poverty*, *in* ON UNDERSTANDING POVERTY: PERSPECTIVES FROM THE SOCIAL SCIENCES (Daniel Patrick Moynihan ed. 1968) [hereinafter Lewis, *The Culture of Poverty*] (stating that the culture of poverty "tends to perpetuate itself from generation to generation because . . . [b]y the time slum children are age six or seven, they have usually absorbed the basic values and attitudes of their subculture, and are not psychologically geared to take advantage of changing conditions or increased opportunities which may occur in their lifetime").

power to escape poverty if only she would exercise sufficient will and responsibility.

By locating the cause of poverty in the individual, culturalism also places responsibility on the individual to solve poverty. Culturalism thus deflects attention from those powerful "structural" causes of poverty that are circumstantial and external to the individual.[41] Structural causes of poverty include racial discrimination, racial segregation, the overall decline in low-skill jobs due to industrialization, technology, and globalization, grossly inadequate public schools, disproportionate rates of incarceration, language differences, the spatial mismatch between jobs and where people live, the unreliability of public transit, a lack of affordable child care, and inadequate access to medical care, to name just a few.[42] Culturalism omits or strongly deemphasizes these external causes of poverty, which are beyond the control of any individual and cannot be expected to be overcome through will and determination. Moreover, culturalism denies the role of the state itself in creating and reinforcing structural causes of poverty.[43] In doing so, culturalism deflects responsibility away from the government to address the barriers to work and opportunity that it helps to create, and places the titanic burden of overcoming broad historical, societal, and economic forces on the very people who are already suffering from their effects.

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41. Bach, *Hyperregulatory State, supra* note 16, at 325; Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1144 (2000); Wendy A. Bach, *Governance, Accountability, and the New Poverty Agenda*, 2010 WIS. L. REV. 239, 277–78 (2010); Wilson, *supra* note 34, at 46. For a number of reasons, scholars, politicians, and others frequently emphasize either cultural or structural causes of poverty to the exclusion of the other, without acknowledging that both may be at work simultaneously. *See* Wilson, *supra* note 37, at 20–24, 135–38; Joel F. Handler, REFORMING THE POOR 6 (1972) (suggesting that the primary difference between culturalists and structuralists is that the former emphasize the reform of the poor as the solution to poverty, while structuralists seek to change poor peoples' environment).

42. A comprehensive list of structural barriers to employment is not possible here, but for discussions of structural circumstances leading to poverty in poor and minority urban areas, see McFarlane, *supra* note 36, at 333–34; Dawinder S. Sidhu, *The Unconstitutionality of Urban Poverty*, 62 DEPAUL L. REV. 1, 16–24 (2012).

43. Jennifer Pokempner & Dorothy E. Roberts, *Poverty, Welfare Reform, and the Meaning of Disability*, 62 OHIO ST. L.J. 425, 445 (2001) ("[A] structural analysis of poverty . . . would require acknowledging the degree to which the state indeed does intervene in the economy in ways that maintain the current racial patterns and class power, and that different forms of intervention could create more equitable social and economic relations.").

In sum, culturalism stigmatizes the poor, devalues their belief systems, and justifies the perpetuation of inequality. As expressed through the law of public aid programs, it subjects the poor to extensive intrusions upon their privacy and liberty. To rebut culturalism, some have sought to expand the law's recognition of the dignity of the poor.[44] Dignity is an appropriate antidote to culturalist degradations, as it is widely associated with individual liberty and autonomy,[45] privacy,[46] equality,[47] and the decent treatment by society of its members.[48] It is considered to be inherent to each human[49] and worthy of respect and recognition by other humans and the government.[50] Dignity is what "gives each of us equal standing against arbitrary government action that demeans, humiliates, and degrades."[51] Thus, dignity provides a basis for challenging culturalist laws.

Legal scholars have questioned whether human dignity has a meaning independent of other concepts, such as autonomy, privacy, or equality,[52] but even if it does not, the term holds significance in legal discourse. The Supreme Court has invoked dignity in discussing the First, Fourth, Fifth, Sixth, Eighth, Ninth, Eleventh, Fourteenth, and Fifteenth Amendments,[53] and the concept of dignity is useful as an

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44. *See infra* Part III.

45. *See, e.g., id.* at 744–53; Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 545–46 (2010); Rex D. Glensy, *The Right to Dignity*, 43 COLUM. HUM. RTS. L. REV. 65, 110 (2011) (stating that a "unifying theme" is that "dignity embodies the principle of an individual's entitlement to exercise his free will.").

46. *See* Jonathan Kahn, *Privacy as a Legal Principle of Identity Maintenance*, 33 SETON HALL L. REV. 371, 378, 383 (2003). Autonomy and privacy are sometimes seen as related, although they can also be distinguished. *See* Louis Henkin, *Privacy and Autonomy*, 74 COLUM. L. REV. 1410, 1410–11 (1974) (distinguishing "privacy—freedom from official intrusion" from "something essentially different and farther-reaching, an additional zone of autonomy, of presumptive immunity to governmental regulation").

47. Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 222 (2011); Christopher A. Bracey, *Dignity in Race Jurisprudence*, 7 U. PA. J. CONST. L. 669 (2005); Glensy, *supra* note 45, at 130.

48. Henry, *supra* note 47, at 222.

49. *See* Glensy, *supra* note 45, at n. 57 (discussing Immanuel Kant's belief that dignity derives from sentience); Maxine D. Goodman, *Human Dignity in Supreme Court Constitutional Jurisprudence*, 84 NEB. L. REV. 740, 749 (2006).

50. *See* Neomi Rao, *Three Concepts of Dignity in Constitutional Law*, 86 NOTRE DAME L. REV. 183, 187 (2011); Bracey, *supra* note 47; Glensy, *supra* note 45, at 86.

51. Goodman, *supra* note 49, at 751.

52. *See id.* at 126–27; Rao, *supra* note 50, at 190.

53. *See* Henry, *supra* note 47, at 173; Goodman, *supra* note 49.

organizing or centering principle.[54] It is used for that purpose in this article. The term "dignitary rights" is used to refer to affirmative support in the law for the autonomy, privacy, and equality of people seeking or receiving public assistance.

III. COUNTERING CULTURALISM WITH DIGNITY

The promotion of dignitary rights as a legal strategy for combatting culturalism in welfare programs has been traced back to New Deal-era social work theories[55] and to writings by other influential non-lawyers.[56] From the New Deal through the 1960s, culturalism at the state level was resisted by some federal welfare agency lawyers who promulgated theories of equal protection for the poor.[57] Dignitary rights became a national focus as the civil rights movement established new rights for racial minorities and as President Johnson's War on Poverty galvanized policymakers, activists, and legal scholars around welfare reform.[58]

Not coincidentally, there was also a strong backlash against culturalism at this time. Controversy swirled around an internal 1965 Department of Labor paper known as the "Moynihan Report," which described the breakdown of the black family as at the center of a "tangle of pathology" and as the "principal source of most of the aberrant, inadequate, or anti-social behavior that did not establish, but now serves to perpetuate the cycle of poverty and deprivation."[59] The report was widely castigated as promoting the idea of a culture of

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54. *See* Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 749 (2011) ("The introduction of a third overarching term like 'dignity' that acknowledges the links between liberty and equality is overdue . . . . We need to look past doctrinal categories [such as 'equality' claims made on equal protection grounds and 'liberty' claims made on due process grounds] to see that the rights secured within those categories are often hybrid rights."); Glensy, *supra* note 45, at 127.

55. *See* William H. Simon, *The Invention and Reinvention of Welfare Rights*, 44 MD. L. REV. 1, 4 (1985); Susan D. Bennett, *"No Relief but upon the Terms of Coming into the House": Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System*, 104 YALE L.J. 2157, 2185–86 (1995) [hereinafter Bennett, *No Relief*].

56. *See* Nichol, *supra* note 20, at 1663 (citing the work of Jane Addams, Walter Rauschenbusch, William Ryan, and Frances Fox Piven).

57. *See* Tani, *supra* note 23, at 845–51.

58. *See* Forbath, *supra* note 13, at 1822.

59. U.S. DEPARTMENT OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 29–30 (1965).

poverty and for blaming the victims of poverty for their circumstances.[60]

It was against this backdrop that the Supreme Court began considering how the government should treat welfare applicants and recipients. At the time, a welfare administrator could deny a person aid merely because her life choices offended the officer's personal sense of morality. For example, caseworkers had broad discretion to determine if children were being raised in a "suitable family home," which was generally interpreted as having married parents and sometimes as requiring that children receive religious instruction.[61] In some states, women were subject to warrantless midnight searches by program administrators to discover whether there was a "man-in-the-house" who provided financial support.[62] Officials routinely denied

60. The Moynihan Report was associated with the recent work of Oscar Lewis. *See* Lewis, *The Culture of Poverty*, at 187–200; OSCAR LEWIS, FIVE FAMILIES: MEXICAN CASE STUDIES IN THE CULTURE OF POVERTY (1959); OSCAR LEWIS, LA VIDA: A PUERTO RICAN FAMILY IN THE CULTURE OF POVERTY IN SAN JUAN AND NEW YORK (1966). Although the term "culture of poverty" is today often used to refer to culturalist ideology, the ideas of Moynihan and Lewis can be substantively distinguished from culturalism to the extent that they explicitly acknowledge structural causes of poverty, such as slavery and chronic unemployment. However, they also argued that poor people developed psychological or cultural attitudes that perpetuated their own poverty, among other things, which caused political backlash from liberals and enabled conservatives to appropriate their work in support of culturalist ideology. *See, e.g.*, MICHAEL B. KATZ, THE UNDESERVING POOR 19–20, 41, 45 (1989); William Julius Wilson, *The Moynihan Report and Research on the Black Community*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 34, 39 (2009) (discussing numerous factors causing the backlash against the Moynihan Report, despite its recognition of the structural causes of poverty); Wilson, *supra* note 37, at 152 ("A social scientist who incorporates culture in a comprehensive framework on race and poverty has an obligation to highlight the powerful impact of structural forces because cultural explanations are more likely to resonate with the general public and policy makers."); Joshua Guetzkow, *Beyond Deservingness: Congressional Discourse on Poverty, 1964–1996*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 173, 175 (2010) (differentiating the 1960s "culture-of-poverty" theory from the culturalist ideology of the 1980s and 1990s); LEWIS, LA VIDA, p. xii (acknowledging the "danger that my findings might be . . . used to justify prejudices and negative stereotypes."). The backlash was so strong that social scientists shied away from discussing "culture" until the late 1980s, when William Julius Wilson reintroduced the topic in 1987. *See* Jasmin Sethi, *Lessons for Social Scientists and Politicians: An Analysis of Welfare Reform*, 17 GEO. J. ON POVERTY L. & POLICY 5, 13–14 (2010); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED (1987).

61. *See* Roger E. Kohn, *AFDC Eligibility Requirements Unrelated to Need: The Impact of* King v. Smith, 118 U. PA. L. REV. 1219, 1220–21 (1970).

62. *See, e.g.*, Jordan C. Budd, *A Fourth Amendment for the Poor Alone: Subconstitutional Status and the Myth of the Inviolate Home*, 85 IND. L.J. 355, 367

benefits based on arbitrary standards, such as whether an official suspected that the applicant had crossed state lines to access benefits[63] and whether the recipient pledged loyalty to the government.[64]

Similarly arbitrary standards were applied in the public housing program at the time. Admission could be denied on the basis of race, personal demeanor, and family composition.[65] Officials refused to admit or evicted people who were unmarried mothers,[66] received welfare benefits,[67] were seen as threats to the morals of others,[68] refused to take loyalty oaths,[69] were elected as tenant advocates,[70] or held social gatherings,[71] as well as those whose family members were incarcerated,[72] gang members,[73] or drug addicts.[74] In short, government administrators exercised extremely broad discretion to withhold aid from those they deemed morally or otherwise unworthy.

a. Conditions Cases and the Due Process Revolution

Legal scholars have scrutinized the conditioning of aid on arbitrary standards and the extensive governmental intrusions into the private lives of the poor. Professor Charles Reich published a series of articles setting forth a dignity-based rationale for protecting aid

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(2010) (explaining that in the decades following the Great Depression, social workers in many jurisdictions were empowered to make unannounced home visits).

63. *See* Forbath, *supra* note 13, at 1840.

64. *See* Charles A. Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245, 1250 (1965) [hereinafter Reich, *Individual Rights*].

65. *See* IRWIN DEUTSCHER, *The Gatekeeper in Public Housing*, *in* AMONG THE PEOPLE: ENCOUNTERS WITH THE POOR 38–52 (1968).

66. *See* Green, *supra* note 14, at 735; Lewis v. Housing Auth., 397 F.2d 178, 179 (5th Cir. 1968); Robin Minter Smyers, *High Noon in Public Housing: The Showdown Between Due Process Rights and Good Management Practices in the War on Drugs and Crime*, 30 URB. LAW. 573, 579–80 (1998); *Public Landlords and Private Tenants: The Eviction of "Undesirables" From Public Housing Projects*, 77 YALE L.J. 988, 990 (1968).

67. *See* Colon v. Tompkins Square Neighbors, Inc., 294 F. Supp. 134, 137 (S.D.N.Y. 1968).

68. *See* Reich, *supra* note 64, at 1250.

69. *See* Charles Reich, *The New Property*, 73 YALE L.J. 733, 742 (1964) [hereinafter Reich, *The New Property*].

70. *See Undesirables*, *supra* note 66, at n.18; Thorpe v. Hous. Auth. of City of Durham, 393 U.S. 268, 268 (1969) (noting that petitioner received a lease cancellation notice the day after being elected president of a tenant's organization).

71. *See Undesirables*, *supra* note 66, at n.10.

72. *See* Smyers, *supra* note 66, at 583.

73. *See Undesirables*, *supra* note 66, at 990.

74. *See id.* at n.16.

recipients against governmental abuse[75] and raising concerns of privacy, freedom of speech, and equal protection.[76] These issues were also brought to the attention of the Supreme Court in the late 1960s and early 1970s, when the Court articulated new dignitary rights for recipients of public assistance through a series of welfare rights cases and through another series of cases known collectively as "the due process revolution." Some cases focused on the legality of placing certain conditions on the receipt of government benefits,[77] while others focused on the procedural protections applicable to government decision-making.

The conditions cases limited the behavioral controls that a state could impose on aid recipients. In 1968, in *King v. Smith*, the Court struck down "man-in-the-house" rules denying welfare benefits to a woman who cohabited with a man on the presumption that the man would provide financial support and make state assistance unnecessary.[78] Striking these rules as an arbitrary moral sanction unrelated to the statutory goal of supporting needy children,[79] *King* broke ground by clarifying that the regulation of morality is a separate and distinct project from the relief of poverty. However, its application

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75. *See* Charles A. Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963) (regarding affronts to privacy and dignity in welfare searches). Other influential works include *Individual Rights*, *supra* note 64 (studying the basic legal issues underlying decisions affecting recipients of public assistance and other welfare beneficiaries), and *The New Property*, *supra* note 69 (exploring changes in government largess and its consequences to individuals and society). Reich had connections to the federal welfare agency lawyers who supported equal protection for aid recipients. *See* Tani, *supra* note 23, at 884. For other legal scholarship of the time arguing for constitutional protections for the poor, see Frank I. Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969) (discussing whether the Supreme Court has handled the War on Poverty as carefully as it ought to have done), and Frank I. Michelman, *In Pursuit of Constitutional Welfare Rights: One View of Rawls' Theory of Justice*, 121 U. PA. L. REV. 962 (1973) (analyzing Rawls' *Theory of Justice*).

76. Reich highlighted the public housing system as egregiously unjust because of the discretion afforded to local officials and the lack of procedural safeguards over that discretion. *See* Reich, *Individual Rights*, *supra* note 64, at 1250.

77. "Conditions" cases focus not only on public assistance benefits, but also on other government benefits on which conditions are placed. *See, e.g.*, Note, *Unconstitutional Conditions*, 73 HARV. L. REV. 1595 (1960); Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413 (1989).

78. King v. Smith, 392 U.S. 309, 334 (1968). *King* is also significant because it acknowledged a welfare recipient's right to sue state agencies to enforce federal statutory provisions under 42 U.S.C. 1983. *See* Aaronson, *supra* note 8, at 994.

79. *See King*, 392 U.S. at 334; *see also* Thomas v. Hous. Auth., 282 F. Supp. 575, 581 (E.D. Ark. 1967) (holding the denial of public housing benefits to unwed mothers invalid as overbroad and inconsistent with the purpose of the program).

has been relatively limited, since it was decided on statutory grounds and not on grounds of constitutional dignity, and just a few years later the Court upheld other warrantless home visits as not unreasonable under the Fourth Amendment.[80]

Another important conditions case, *Shapiro v. Thompson,* struck down the use of durational residency requirements to deny welfare benefits, unless necessary to promote a compelling state interest, on the grounds that they impermissibly penalized a poor person's constitutional right to travel.[81] *Shapiro* repudiated such "invidious discrimination" against the poor and its precedent in the Elizabethan Poor Laws,[82] and relied on the Equal Protection Clause to establish that the poor have the same liberty interests as the more affluent, and that the government cannot force them to sacrifice those rights in exchange for aid.[83]

In these and other conditions cases, the Court took a stand against culturalism's conflation of poverty with blame and immorality and established a legally-protected sphere of dignity for the poor. Over time, other conditions on aid have been struck down, while still others have been upheld, but overall these cases have sought to establish dignitary rights by making constitutional guarantees equally applicable to the poor.[84]

The Court also sought to rebuff culturalism through constitutional procedural rights. Procedure is thought to promote human dignity in that it can serve to "establish a just society [and] to enable all people to participate fully in our democracy without limitations imposed by a lack of economic resources or political power."[85] Professor Reich's influential works also articulated procedural arguments, contending that while administrative law protected businesses and the non-poor from governmental abuses of power, it failed to protect the privacy and liberty rights of aid recipients.[86]

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80. *See* Wyman v. James, 400 U.S. 309, 326 (1971).

81. *See* Shapiro v. Thompson, 394 U.S. 618, 642 (1969) *overruled in part by* Edelman v. Jordan, 415 U.S. 651 (1974).

82. *Id.* at 628 and n.7.

83. *See id.* at 627.

84. *See* Lynn A. Baker, *The Prices of Rights: Toward a Positive Theory of Unconstitutional Conditions*, 75 CORNELL L. REV. 1185 (1990).

85. Rebecca E. Zietlow, *Giving Substance to Process: Countering the Due Process Counterrevolution*, 75 DENV. U. L. REV. 9, 14 (1997) [hereinafter Zietlow, *Giving Substance*].

86. *See id.* at 16.

Reich drew upon changing notions of property[87] to define property rights held by the poor in government benefits and to argue for the application of procedural protections to respect those rights.[88] The Court cited Reich's work in the landmark procedural case of *Goldberg v. Kelly*,[89] decided in 1970, which considered what process was due when a state agency terminated welfare benefits. The litigant had conceded that due process was statutorily required, so the narrow question for the Court was whether, in the context of the welfare program, constitutional due process required a pre-termination evidentiary hearing. *Goldberg* held that a pre-termination evidentiary hearing was indeed required[90] so that welfare recipients could hear the charges against them, present their side of the story, cross-examine witnesses and evidence, and have counsel present.[91]

In writing for the majority, Justice Brennan drew explicitly on the concept of dignity to pen a decidedly anti-culturalist statement:

> From its founding, the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to "promote the general Welfare, and secure the Blessings

87. *See* Sidney A. Shapiro & Richard E. Levy, *Government Benefits and the Rule of Law: Toward a Standards-Based Theory of Due Process*, 57 ADMIN. L. REV. 107, 110 (2005).

88. Since government defines what property is, Reich argued, government was responsible for the disparity between the wealthy and the poor, and consequently, welfare is a "right that society owes to poor people." Reich, *The New Property*, *supra* note 69; *see also Undesirables*, *supra* note 64.

89. *See* Goldberg v. Kelly, 397 U.S. 254, n.8 (1970) (quoting Reich's *Individual Rights* and citing *The New Property*); *see also* Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 885, 919 (2000).

90. *See Goldberg*, 397 U.S. at 264.

91. *See id.* at 267–68; *see also* Randal S. Jeffrey, *The Importance of Due Process Protections After Welfare Reform: Client Stories From New York City*, 66 ALB. L. REV. 123, 125 (2002).

> of Liberty to ourselves and our Posterity." The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it; pre-termination evidentiary hearings are indispensable to that end.[92]

The Court explicitly emphasized the connection between dignity, welfare, and due process, tying these concepts to constitutional equality and liberty.[93] Strikingly, it also linked these concepts to the understanding that "forces not within the control of the poor contribute to their poverty,"[94] expressly embracing the structuralist view of poverty and repudiating culturalism's blame of the individual. Moreover, the Court characterized the "malaise," "frustration," and "insecurity" experienced by the poor as problems caused *by* poverty,[95] not as causes *of* poverty intrinsic to the poor person's character, as culturalist ideology would purport. Even more importantly, the Court refuted the culturalist belief that responsibility lies with the individual to solve her own poverty. Rather, it cited the Preamble to the Constitution to indicate that that burden rests with the government.[96]

Goldberg represents a high point in the Court's support for the dignity of aid recipients.[97] In the years immediately after *Goldberg*, the Court also issued other important procedural opinions[98] addressing notice-and-comment requirements under the Administrative

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92. *Goldberg*, at 264–65 (citations omitted).

93. *See id.* at 265.

94. *Id.* (citing Reich's *Individual Rights*).

95. *Id.* This approach aligns to some extent with that of some contemporary sociologists, who argue that specific "cultural" traits do exist among the poor, but that they are caused *by* poverty and other structural injustices. *See supra* text accompanying note 39.

96. The preamble to the U.S. Constitution reads in full:
> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

97. *See* Goodman, *supra* note 49, at 784 ("After *Goldberg*, the Court's willingness to advance human dignity in welfare rights cases faltered.").

98. *See* U.S. v. Allegheny-Ludlum Steel Corp., 406 U.S. 742, 757–58 (1972); U.S. v. Fl. E. Coast Ry. Co., 410 U.S. 224, 240 (1973); Vt. Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978); *see also* Reich, *Individual Rights*, *supra* note 64, at 1252 (stating that rules should be "clearly formulated in advance of any action"); Henry J. Friendly, *"Some Kind of Hearing"*, 123 U. PA. L. REV. 1267 (1975) (exploring early ramifications of *Goldberg* for rulemaking).

Procedures Act,[99] as discussed below.[100] But since *Goldberg*, scholars have documented a scarcity of Supreme Court support for poor people.[101] Moreover, despite its strong anti-culturalist stance, *Goldberg* itself suffers some debilitating limitations that make it an inadequate tool for combating culturalism, as will be discussed. Even so, the cases of the *Goldberg* era are important for their affirmation that the poor have equal substantive and procedural rights as the more affluent, and for placing some boundaries on the use of aid to regulate the lives of the poor. These cases represent a strong repudiation of culturalist ideology through an embrace of dignitary rights.

b. Applications in Public Housing

The Court's dignitary rulings, primarily decided in the context of welfare, have for the most part been seamlessly translated to the public housing context. Below is a very brief introduction to the public housing program and a short discussion of how the Court's doctrines are applicable to public housing. A critique of how culturalism has subverted these doctrines follows in the next section.

Public housing is a federal program developed, administered, and funded by the U.S. Department of Housing and Urban Development (HUD) and implemented by local housing agencies, which are usually instrumentalities of the city or county government.[102] A public housing unit is traditionally a brick-and-mortar unit, built in a fixed location, and owned and operated by the local agency. Local agencies depend almost exclusively on federal funds to carry out the program and thus must follow highly prescriptive

99. Administrative Procedure Act § 10a, 5 U.S.C. 1009.

100. *See infra* Part IV.a.ii.

101. *See, e.g.*, Matthew Diller, *Law and Equality: Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1421 n.96 (1995) (stating that from 1980 to 1995, "Supreme Court decisions on public benefits issues have mostly taken the form of reversals of lower court decisions in favor of poor people"); Maxine D. Goodman, *Human Dignity in Supreme Court Constitutional Jurisprudence*, 84 NEB. L. REV. 740 (2006); Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389, 393 (2014) ("Supreme Court doctrine has reinforced economic inequality in the areas of education, redistribution, corporate law, and the political process.").

102. Approximately 3,100 local agencies nationwide own and manage public housing. *Facts About Public Housing*, THE COUNCIL OF LARGE PUBLIC HOUSING AUTHORITIES, http://www.clpha.org/facts_about_public_housing (last visited Nov. 30, 2015). These entities are usually governed by boards of directors appointed by a mayor or another public official.

federal mandates, although they do exercise some discretion to the extent permitted by federal law.[103]

Traditional public housing is distinguishable from so-called "Section 8" or "voucher" housing. Section 8 housing is generally owned and operated not by governmental entities but by private landlords, and it is also governed by a different set of laws,[104] although some similar requirements apply to both programs. Traditional public housing is also distinguishable from privatized public housing, although many of the dignitary protections are equally applicable to both.[105]

Although public housing differs from jurisdiction to jurisdiction and from site to site, national averages provide a sense of what poverty in public housing looks like. Over two million people across the country live in public housing,[106] having an average household income of $13,724[107] and paying roughly 30% of their monthly adjusted income towards rent.[108] Approximately seven of eight residents are elderly, disabled, and/or responsible for small children.[109] In 2005, the Urban Institute found that 40% of residents at five public housing sites in Chicago were "hard to house," meaning that their ability to find

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103. For a discussion of the extent of federal control over public housing policy, see Otto J. Hetzel, *Asserted Federal Devolution of Public Housing Policy and Administration: Myth or Reality*, 3 WASH. U. J.L. & POL'Y 415 (2000).

104. Public housing is funded under Section 9 of the Act, codified as amended at 42 U.S.C. § 1437g (2008), whereas Section 8 or voucher housing is funded under Section 8, codified as amended at 42 U.S.C. § 1437f (2014). For further discussion of what is popularly known as the "Section 8" or "voucher" program, see *infra*, Part V.a.

105. There are some important differences in how dignitary rights operate in privatized public housing, although these differences do not need to be discussed for the purposes of this article. For a full discussion, see Jaime A. Lee, *Rights at Risk in Privatized Public Housing*, 50 TULSA L. REV. 759 (2014) [hereinafter Lee, *Rights at Risk*].

106. This number is derived from HUD administrative data from 2010, adjusted to 2013. *See* Data Generator for Subsidized Housing, U.S. DEP'T OF HOUS. & URBAN DEV., http://www.huduser.org/portal/datasets/picture/yearlydata.html#data-display-tab (for program tab, query "Public housing," and for variable tab, select "Number of people: total"; then click "get results").

107. This number is derived from HUD administrative data from 2010, adjusted to 2013. *See* Data Generator for Subsidized Housing, U.S. DEP'T OF HOUS. & URBAN DEV., http://www.huduser.org/portal/datasets/picture/yearlydata.html#data-display-tab (for program tab, query "Public housing," and for variable tab, select "Household income per year"; then click "get results").

108. 42 U.S.C. § 1437a(a)(1) (2014).

109. *Policy Basics: Introduction to Public Housing*, CENTER ON BUDGET AND POLICY PRIORITIES (June 1, 2015), http://www.cbpp.org/cms/?fa=view&id=2528.

alternative shelter is severely limited because of income and other factors, such as a lack of a high school degree or involvement with the criminal justice system.[110] Public housing residents also report a "stunning" incidence of health problems, significantly above national averages, which frequently turn daily living activities into challenges.[111] Even so, wages are a major source of income for 28% of households,[112] and only 12% depend on welfare as a major source of income.[113]

Despite the severe challenges they face, public housing residents remain subject to culturalism's disdain. Residents have, however, benefited to some extent from the counter-culturalist protections established by the Court in the context of welfare.

i. Conditions

Public housing assistance, like welfare, has frequently been conditioned on arbitrary moral standards offensive to notions of privacy and free association. After the Supreme Court issued its landmark conditions cases, it took some time for public housing conditions to be excised by the courts—some policies deemed "galling" by legal scholars in the late 1960s[114] were not litigated until the 1980s—but courts did eventually strike policies requiring the registration of overnight guests[115] and denying benefits to nontraditional families[116] and unmarried parents.[117] Legal challenges

110. MARY K. CUNNINGHAM, SUSAN J. POPKIN, & MARTHA R. BURT, PUBLIC HOUSING TRANSFORMATION AND THE "HARD TO HOUSE" 3 (June 2005), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/311178-Public-Housing-Transformation-and-the-quot-Hard-to-House-quot-.PDF (studying five "distressed" sites in 2005 in Chicago); *see also* SUSAN J. POPKIN ET AL., A DECADE OF HOPE VI: RESEARCH FINDINGS AND POLICY CHANGES 32–33 (May 2004), http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf.

111. *See* SUSAN J. POPKIN & LIZA GETSINGER, TACKLING THE BIGGEST CHALLENGE (Dec. 18, 2014), http://www.urban.org/uploadedpdf/412257-Intensive-Case-Management.pdf.

112. *See* Data Generator for Subsidized Housing, *supra* note 106.

113. *See id.*

114. *See* Reich, *Undesirables*, *supra* note 64, at 990.

115. *See* McKenna v. Peekskill Hous. Auth., 647 F.2d 332, 336 (2d Cir. 1981) (holding that a "demand for prior permission, disclosure of names, and approval [of overnight guests], was . . . an overbroad defense against remote dangers which could all have been combated in more direct and less intrusive ways").

116. *See* James v. N.Y.C. Hous. Auth., 622 F. Supp. 1356, 1359–63 (S.D.N.Y. 1985) (striking a ban on "newly formed" families).

117. *See* Hann v. Hous. Auth., 709 F. Supp. 605, 606 (E.D. Pa. 1989). Some local policies now affirmatively embrace nontraditional families that "evidence a stable

to conditions on public housing assistance are not always successful,[118] but overall, public housing benefits today are much less likely to be conditioned on the waiver of fundamental rights.

Of special note is that once-common restrictions on resident speech are now subject to much greater scrutiny,[119] which is not only important for the residents' general freedom of expression, but has had particularly important implications for residents' ability to organize, mobilize,[120] and engage in collective action to combat culturalism, as discussed below in Part IV.

ii. Adjudications

Public housing fully adopted *Goldberg*'s mandate of a pre-termination evidentiary hearing. The Second Circuit applied *Goldberg* to public housing in *Escalera v. New York City Housing Authority*,[121] brought by a class of residents challenging evictions for "undesirability," among other things. *Escalera* held that the Fourteenth Amendment forbids termination of benefits without adequate notice of the charges, the right to cross-examine witnesses and evidence, and other procedural safeguards.[122] Similarly, the Fourth Circuit expressly extended *Goldberg* protections to public housing terminations in a case involving a woman evicted because her children allegedly committed immoral acts.[123]

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family relationship, regardless of marriage or blood ties," as well as teenage mothers. Madeline Howard, *Subsidized Housing Policy: Defining the Family*, 22 BERKELEY J. GENDER L. & JUST. 97, 103–04 (2007).

118. *See* Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002)

119. *See generally* Christopher D. Pelliccioni, *Political Speech in the Nonpublic Forum: Can Public Housing Facilities Limit Access to Political Canvassers?*, 53 CASE W. RES. L. REV. 569 (2002) (discussing circuit split as to whether political activists may be barred from public housing premises); U.S. DEP'T OF HOUS. & URBAN DEV., PIH-2012-32 (HA), Rental Assistance Demonstration—Final Implementation, Revision 1, 93–98 (July 2, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-32rev1.pdf [hereinafter *RAD Notice*] (protecting organizing activities in certain privatized public housing, including canvassing, use of meeting space, and working with nonresident organizers).

120. Mobilization involves mounting collective action campaigns for the purpose of gaining bargaining power. *See, e.g.*, Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 443 (2001) (describing how, like their union counterparts, "law and organizing proponents seek to build collective bargaining power in order to create more equitable working conditions").

121. Escalera v. N.Y.C. Hous. Auth., 425 F.2d 853 (2d Cir. 1970).

122. *See id.* at 862.

123. *See* Caulder v. Durham Hous. Auth., 433 F.2d 998 (4th Cir. 1970).

Another Supreme Court case hastened the administrative application of *Goldberg* to public housing nationwide. In *Thorpe v. Housing Authority*, a resident was evicted after being elected president of a resident organization.[124] Prior to *Goldberg*, the Court had already ruled that the resident in *Thorpe* deserved notice of the reasons for her eviction, as well as an opportunity to reply, and remanded.[125] Before *Thorpe* could go back to the U.S. Supreme Court on the First Amendment claim, HUD issued administrative guidance requiring pre-termination evidentiary hearings, then further refined this guidance through negotiations with a group of housing agencies and with legal advocates representing the interests of residents.[126] This guidance was later codified by statute and incorporated into federal regulations.[127]

These procedures, called "grievance" procedures, mirror the *Goldberg* standards. They provide first for an informal discussion, through which landlord and resident can seek to resolve their dispute.[128] A resident can then request a more formal hearing, adjudicated by an "impartial" person selected in accordance with a process approved collectively by the residents,[129] at which a lawyer or other representative may be present.[130] The resident may examine the written rules that she allegedly violated, examine the landlord's documents and witnesses against her, and present her own evidence in rebuttal. Both informal and formal processes must be documented in writing[131] and the formal hearing decision is binding on the landlord and can be appealed in court.[132]

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124. Thorpe v. Hous. Auth. of City of Durham, 393 U.S. 268 (1969).

125. *See id.*

126. *See* George Lefcoe, *HUD's Authority to Mandate Tenants' Rights in Public Housing*, 80 YALE L.J. 463, 472–75 (1971).

127. *See* 42 U.S.C. § 1437d(k), 24 C.F.R. §§ 966.50-966.57.

128. *See* 24 C.F.R. § 966.54; U.S. DEP'T OF HOUS. & URBAN DEV., PUBLIC HOUS. OCCUPANCY GUIDEBOOK 210 (June 2003), http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10760.pdf [hereinafter HUD, OCCUPANCY GUIDEBOOK].

129. 42 U.S.C. § 1437d(k)(2); 42 U.S.C. § 1437c-1(d)(6), (e) and (f) (requiring the development of the grievance procedure in consultation with the resident advisory board and the holding of an open meeting for review and comment on the procedure); 24 C.F.R. § 966.55(b).

130. *See* 42 U.S.C. § 1437d(k)(4).

131. *See* 24 C.F.R. § 966.54 (1984); 24 C.F.R. § 966.56(G) (1991); 42 U.S.C. § 1437d(k)(6) (1998); HUD, OCCUPANCY GUIDEBOOK, *supra* note 128.

132. *See* 24 C.F.R. § 966.57 (1984). All states also require a court hearing prior to eviction. *See The Eviction Process*, EVICTION RESOURCES,

These rights to understand and contest termination decisions are a key part of *Goldberg*'s legacy. In addition, *Goldberg*'s protections were extended in two important ways. In *Joy v. Daniels*, procedural due process was held to apply not just when a lease is prematurely terminated, but also when a lease expires.[133] Thus, a public housing lease must be renewed year after year, unless there is sufficient cause to terminate benefits. This assures residents of shelter from year to year and greatly increases their housing stability.[134] The second important extension of *Goldberg* is that grievance rights are mandated not only in cases of termination, but in the event of nearly "any adverse action" by the landlord,[135] which means that a resident has the right to grieve nearly any landlord action against her.

iii. Rulemaking

As noted briefly above, after *Goldberg*, the Court issued other important procedural due process rulings. Among other things, the Court set forth minimum requirements for rulemakings under the Administrative Procedures Act.[136] The APA governs regulatory actions by HUD and, consequently, national advocacy organizations frequently participate in federal rulemaking procedures on behalf of residents. The APA does not apply to the local agencies that own and operate the housing, since they are not federal agencies but state instrumentalities.[137] Because these local agencies exert so much control over the day-to-day lives of residents, however, federal law requires them to follow APA-like notice-and-comment procedures, as discussed below in Part IV.

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http://www.evictionresources.com/eviction_process.html (last visited Dec. 18, 2014).

133. *See* Joy v. Daniels, 479 F.2d 1236, 1242 (4th Cir. 1973).

134. *See* Lee, *Rights at Risk*, *supra* note 105, at 778.

135. 42 U.S.C. § 1437d(k); 24 C.F.R. § 966.51(a)(2)(i) (2014). These rules echo *Escalera*, which held that even the assessment of minor fines by a landlord against a resident, such as a two-dollar fine for playing ball on the property, triggered some level of procedural protection. Escalera v. N.Y.C. Hous. Auth., 425 F.2d 853, 863 (2d Cir. 1970). Exceptions include circumstances where the health, safety, or right to peaceful enjoyment of others is threatened and where there is violent or drug-related criminal activity. *See* 42 U.S.C. § 1437d(k); 24 C.F.R. § 966.51(a)(2)(i) (2014).

136. *See* Administrative Procedure Act § 10a, 5 U.S.C. 1009.

137. 5 U.S.C. § 701 (West 2011) (specifying that "the governments of the territories" are not within the scope of the APA).

c. Culturalist Challenges to Procedure

The protections derived from the Court's rulings have benefits, but provide deeply inadequate protection against culturalism. The procedural rulings proved especially unsatisfying to those who had hoped the Court would go much farther and establish a substantive, constitutional right to welfare benefits. At times, the Court hinted that such a right might exist;[138] *Goldberg*, for example, emphasized that welfare benefits in and of themselves were fundamental to dignity, equality, and liberty as contemplated by the Constitution.[139] Yet the Court never established substantive constitutional rights to a minimum income, jobs, safety, or freedom from prejudice based on lack of income,[140] instead merely establishing formalistic procedural protections.[141] In doing so, the Court might be said to have sided with culturalism's denial of governmental responsibility for alleviating poverty. Consequently, due process jurisprudence has been critiqued as "empty formalism, bereft of the moral guidance needed to bring about justice in our society."[142]

As it turned out, even the formalistic procedural protections the Court did provide were retractable. In *Board of Regents v. Roth*,[143] the Court explained its rationale for applying constitutional standards in *Goldberg*, unnecessary in *Goldberg* itself because it was conceded

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138. *See* Laurence H. Tribe, *Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services*, 90 HARV. L. REV. 1065, 1080 (1977) (discussing *Shapiro v. Thompson* and other cases as suggesting minimal entitlements to services such as health, housing, and employment); Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990); Bennett, *No Relief*, *supra* note 51, at 2183.

139. *See* Goldberg v. Kelly, 397 U.S. 254; *see also* MICHAEL B. KATZ, THE UNDESERVING POOR 180–83 (1989) (discussing dignitary rationales for welfare).

140. *See* Joel F. Handler, *"Constructing the Political Spectacle": The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 900 (1990); Richard J. Pierce, Jr., *The Due Process Counterrevolution of the 1990s?*, 96 COLUM. L. REV. 1973, 1981 (1996) (describing a "partial retreat and consolidation" from 1973 to 1978); Rebecca E. Zietlow, *Two Wrongs Don't Add Up to Rights: The Importance of Preserving Due Process in Light of Recent Welfare Reform Measures*, 45 AM. U. L. REV. 1111, 1121–22 (1996) [hereinafter Zietlow, *Two Wrongs*]; Dandridge v. Williams, 397 U.S. 471 (1970) (rejecting a Constitutional right to income).

141. *See, e.g.*, Sidney A. Shapiro & Richard E. Levy, *Government Benefits and the Rule of Law: Toward a Standards-Based Theory of Due Process*, 57 ADMIN. L. REV. 107, 110–19 (2005); Merrill, *supra* note 89, at 892.

142. Zietlow, *Giving Substance*, at 26 et seq.

143. 408 U.S. 564, 577 (1972) (holding that an untenured professor did not hold a property right in or "entitlement" to his employment at a state university).

there that due process applied. But in *Roth*, the Court expounded on what kind of property rights warranted constitutional due process,[144] explaining that

> [p]roperty rights, of course, are not created by the Constitution. Rather they are created . . . by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in [*Goldberg*] had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them.[145]

In what is known as the "positivist trap,"[146] *Roth* held that constitutionally-protected property rights exist only if the underlying law creates such rights.[147] In other words, *Roth* can be interpreted to allow lawmakers to determine whether due process is mandated, without regard to constitutional principles.[148] Scholars alarmed by the implications of the positivist trap were proven right when Congress statutorily declared an end to entitlement status of welfare in the mid-1990s.[149] Consequently, *Goldberg* protections no longer apply.

Entitlement status has not been legislatively retracted in the public housing context, so *Goldberg*'s pre-termination evidentiary hearings remain mandatory. But these procedures, too, have proven to be highly vulnerable to culturalism. For the hearings to be effective, a hearing officer must fairly consider the matter before her without prejudice or predisposition toward either side, and for this reason, a hearing officer is required to be "impartial."[150] Impartiality is highly unlikely, however, in a society permeated by culturalism. It is even less likely given that employees of the landlord are permitted to adjudicate the procedures as long as they are not personally involved in the

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144. Merrill, *supra* note 89, at 918 (describing *Roth* as "best understood as an effort to secure the legitimacy of the due process revolution started by *Goldberg*").

145. *See Roth* 408 U.S. 577.

146. Merrill, *supra* note 89, at 920.

147. *See* Shapiro & Levy, *supra* note 87, at 110–19; Jerry L. Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 B.U. L. REV. 885, 888 (1981); Zietlow, *Giving Substance*, *supra* note 85, at 28; Merrill, *supra* note 89, *at* 892; *see also* David A. Super, *The Political Economy of Entitlement*, 104 COLUM. L. REV. 633, 635 (2004) (identifying and analyzing at least six different notions of "entitlement").

148. Zietlow, *Giving Substance*, *supra* note 85, at n.135.

149. *See generally id.*

150. 42 U.S.C. § 1437d(k)(2), 24 C.F.R. §§ 966.55(b).

dispute.[151] Hearing officers need not be lawyers, nor must they be trained to address the power imbalances inherent in a dispute where one side controls the other's access to shelter.[152] Furthermore, while grievances are technically appealable, federal oversight of grievance procedures is nominal,[153] judicial enforcement is often inaccessible to the poor,[154] and at any rate, both administrative and judicial procedures are often similarly permeated by culturalism.[155] In short, very little prevents culturalist bias from undermining the effectiveness of grievance processes.

d. The Persistence of Culturalism

Culturalism still thrives in aid programs today. It expresses itself in both welfare and public housing in the form of substandard aid, which is a well-documented culturalist strategy for discouraging dependency.[156] Of the many troubles that have plagued public housing—corrupt and inept management, a shrinking supply of units, maintenance failures that strand elderly and disabled residents

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151. *See* 24 C.F.R. § 966.55(b)(1) (2015).

152. *See* White, *supra* note 138. Similar concerns are present in other forms of alternative dispute resolution. *See, e.g.*, Mindy D. Rufenacht, *The Concern Over Confidentiality in Mediation: An In-Depth Look at the Protection Provided by the Proposed Uniform Mediation Act*, 2000 J. DISP. RESOL. 113, 114; *Protecting Confidentiality in Mediation*, 98 HARV. L. REV. 441 (1984). For a social work perspective on reforming *Goldberg* procedures to address the inherent disadvantages experienced by welfare recipients, see Vicki Lens, *Revisiting the Promise of* Kelly v. Goldberg *in the Era of Welfare Reform*, 21 GEO. J. ON POVERTY L. & POL'Y 43 (2013).

153. Administrative and judicial enforcement of residents' participation rights is all but non-existent. Lee, *Rights at Risk, supra* note 105.

154. *See, e.g.*, David J. Kennedy, *Due Process in a Privatized Welfare System*, 64 BROOK. L. REV. 231, 233 (1998) (privatization and technology reduce due process rights of welfare recipients); Zietlow, *Giving Substance*, *supra* note 85 (limitations on class action lawsuits and on the ability of the poor to secure effective legal representation have effectively undermined the intent of the due process revolution).

155. Even in formal court proceedings, where procedural protections against bias and unfair proceedings are significantly greater than in grievance procedures, poor, self-represented tenants struggle to attain fair outcomes. *See* Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992); Michael Zmora, Note & Comment, *Between* Rucker *and a Hard Place: The Due Process Void for Section 8 Voucher Holders in No-Fault Evictions*, 103 NW. U. L. REV. 1961, 1986 (2009).

156. *See* FRANCES FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE (2d ed. 1993) (explaining that public aid is calculated to provide less than the minimum one could earn through paid work).

without elevators for days,[157] and neglect and crime that make buildings all but uninhabitable[158]—most are attributable, in significant part, to inadequate Congressional funding, which is a tool for discouraging dependency by making sure that public housing is not too comfortable.[159]

Present-day welfare programs, for example, may require a woman to assist with a court action to establish paternity of her child, which constitutes a state-led inquiry into her intimate relations and forces a mother and her child to form legal, familial, and economic ties to the father, whether or not they wish to associate with him.[160] Some states refuse additional benefits for children born after a woman enrolls in a welfare program,[161] constraining her choices to create a family and to engage in sexual activity, especially in areas where reproductive planning services are costly or inaccessible. Simply participating in the welfare program can trigger drug testing[162] and heightened scrutiny from the criminal justice system.[163] People who use food stamps to buy alcohol or tobacco may have their benefits terminated, be fined thousands of dollars, or be imprisoned.[164] A recent

157. *See* Nicole Schmidt, *San Francisco Public Housing as an Avenue for Empowerment: The Case for Spirited Compliance With Tenant Participation Requirements*, 6 HASTINGS RACE & POVERTY L. J. 333, 344–45 (2009) (describing collapsed stairwells, failed plumbing, boarded windows, and sewage water leaking into an apartment, as reported by the *San Francisco Chronicle* in 2007 and 2008).

158. *See generally* Julia Clayton Powell, Comment, *De Facto Demolition: The Hidden Deterioration of Public Housing*, 44 CATH. U. L. REV. 885, 888 (1995) (citing to cases of "de facto" demolition due to failure to keep units in a habitable condition or respond to tenants' repair requests as well as the presence of drug dealing); *see also* Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 877, 897 (1990); SUDHIR ALLADI VENKATESH, AMERICAN PROJECT: THE RISE AND FALL OF A MODERN GHETTO 112 (2000) (reporting that by 1982, "[m]aintenance in public housing had lapsed [and] millions of dollars were needed for modernization.").

159. *See* Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL'Y 35, 55–56 (2002).

160. *See* Zietlow, *Two Wrongs*, *supra* note 140, at 1131.

161. *See* Jennifer Kendrex, *Punishing the Poor Through Welfare Reform: Cruel and Unusual?*, 64 DUKE L.J. ONLINE 121 (2015).

162. *See* Bach, *Hyperregulatory State*, *supra* note 16, at 340–41.

163. *See id.* at 334, 357–66.

164. *See* Restrictions on Use of Public Assistance Electronic Benefit Transfer (EBT) Cards, NAT'L CONFERENCE OF STATE LEGISLATURES, (May 8, 2015), http://www.ncsl.org/research/human-services/.ebt-electronic-benefit-transfer-card-restrictions-for-public-assistance.aspx.

proposal seeks to ban the use of food stamps to buy cookies, chips, energy drinks, and steak.[165]

Morality controls also remain part of life in public housing today so that benefits may be denied to the unworthy. In 2002, the Supreme Court in *Dep't of Hous. & Urban Dev. v. Rucker* held that an entire household may be evicted because one household member or guest engaged in criminal activity,[166] meaning that one can lose shelter for failing to control one's children. Applicants must undergo alcohol and drug screening and may be refused admission for having a criminal record,[167] and current residents may also be subject to drug testing[168] and cannot be readmitted for at least three years after a drug-related eviction.[169] Most residents must work, perform community service, or participate in a self-sufficiency program to retain their benefits.[170] Today, some of these rules have become

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165. *See* H. R. 813, 98th Gen. Assemb. 1st Reg. Sess. (Mo. 2015), http://www.house.mo.gov/billtracking/bills151/billpdf/intro/HB0813I.PDF.

166. *See Rucker*, 535 U.S. 125, 130–131 (2002); *see also* Caroline Castle, Note, *You Call That a Strike? A Post-*Rucker *Examination of Eviction From Public Housing Due to Drug-Related Criminal Activity of a Third Party*, 37 GA. L. REV. 1435 (2003); Regina Austin, *"Step on a Crack, Break Your Mother's Back": Poor Moms, Myths of Authority, and Drug-Related Evictions From Public Housing*, 14 YALE J.L. & FEMINISM 273, 275 (2002); Margaret E. Finzen, Note, *Systems of Oppression: The Collateral Consequences of Incarceration and Their Effects on Black Communities*, 12 GEO. J. ON POVERTY L. & POL'Y 299, 313–14 (2005); Lisa Weil, Note, *Drug-Related Evictions in Public Housing: Congress' Addiction to a Quick Fix*, 9 YALE L. & POL'Y REV. 161, 171 (1991); Michelle Ewert, *One Strike and You're Out of Public Housing: How the Intersection of the War on Drugs and Federal Housing Policy Violates Due Process and Fair Housing Principles*, HARV. J. RACIAL & ETHNIC JUSTICE (forthcoming 2016); *see also* Sarah Swan, *Home Rules*, 64 DUKE L.J. 823, 825–27 (2015) (discussing the expansion of one-strike policies).

167. Act of Oct. 21, 1998, Pub. L. No. 105–276, § 575–577, 112 Stat. 2461, 2633 (1998).

168. There is no federal policy either permitting or prohibiting resident testing, although some local agencies do impose testing. *See* Marah Curtis et al., *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, 15 CITYSCAPE: J. OF POL'Y DEV. & RES., no. 3, 2013, at 37, 39.

169. Ctanston-Gonzalez National Affordable Housing Act, Pub. L. No. 101–625 § 501, 104 Stat. 4079, 4181.

170. 42 U.S.C. § 1437(j); 24 C.F.R. 960.600–960.609. Some agencies have HUD permission to impose especially stringent work requirements. *See, e.g.*, Jennifer Levitz, *Public Housing Agencies Push to Impose Time Limits, Work Requirements for Recipients*, WALL ST. J. (May 6, 2013, 11:00pm) http://www.wsj.com/articles/SB10001424127887323820304578410382522144560. Under the Moving to Work program, 39 public housing agencies may request HUD permission to deviate from standard requirements. *See History of Moving to Work (MTW)*, U.S. DEP'T OF HOUS. AND URBAN DEV, http://portal.hud.gov/

normalized through familiarity, but their invasiveness is more apparent when viewed as a matter of inequality. It is hard to imagine the state requiring a paternity test or drug test from those who claim the mortgage interest tax deduction, or rescinding that financial benefit if the household has a child who uses drugs.

Privatization has further expanded the list of behavioral controls placed on the poor and used to deny access to benefits. Private-sector landlords often employ stricter standards[171] to "cream" those applicants from the waiting list who they believe are more desirable, while denying admission to others, even though they are equally eligible for benefits. People with poor credit and rent payment histories, for example, may be rejected under tighter screening standards imposed by private landlords, thus denying benefits to the poor simply because they have a history of being poor. Stricter screening standards may also be used to reject those suffering from mental health challenges or who otherwise might demand additional resources from landlords, but who are in need of housing and eligible for benefits. Privatized public housing also often extends behavioral controls on the poor by imposing extensive "house rules" banning routine daily activities like playing on the grass, washing or socializing near cars,[172] bike-riding, or holding social gatherings in public.[173] Serious and repeated violations of such rules can potentially lead to eviction,[174] and since local agencies and owners of privatized public housing have discretion as to the scope and administration of some of these rules, behavioral controls are applied inconsistently across the

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hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/history (last visited Oct. 30, 2015).

171. *Academic Perspectives on the Future of Public Housing: Hearing Before the Subcomm. on Hous. & Cmty. Opportunity of the Comm. on Fin. Servs.*, 111th Cong. 117 (July 29, 2009) (statement of Edward G. Goetz, Dir. of Ctr. For Urban & Reg'l Affairs, Univ. of Minn.); *see also* Jesse Kropf, *Keeping "Them" Out: Criminal Record Screening, Public Housing, and the Fight Against Racial Caste*, 4 GEO. J.L. & MOD. CRITICAL RACE PERSP. 75, 78 (2012) (discussing local agencies' screening out of people who have been arrested, but not convicted, for minor crimes); William C. Nussbaum, *Public Housing: Choosing Among Families in Need of Housing*, 77 NW. U. L. REV. 700, 702–03 (1982).

172. *See* Terry A.C. Gray, *De-Concentrating Poverty and Promoting Mixed-Income Communities in Public Housing: The Quality Housing and Work Responsibility Act of 1998*, 11 STAN. L. & POL'Y REV. 173, 181 (1999).

173. DEP'T. OF HOUS. AND URBAN DEV., *Mixed Income Community Dynamics: Five Insights From Ethnography*, EVIDENCE MATTERS (Spring 2013).

174. A lease may be terminated for "serious or repeated violation of material terms of the lease," which usually incorporate behavioral house rules, or for "other good cause." *See* 42 U.S.C. § 1437(l)(1)(5) (1974); 24 C.F.R. §§ 966.4(f)(l)–(2) (2010).

country, within the same jurisdiction, and even within a specific development.[175]

IV. EXTENDING DIGNITY

Despite the lack of effective protections against culturalism—or perhaps because of it—residents have continued to press for greater dignitary rights. Resident-driven mobilization, litigation, and law reform efforts have generated some profound changes. To name just a few instances, thousands of St. Louis residents staged prolonged strikes against rising rents and agency mismanagement in the late 1960s, resulting in rent caps and new federal funding streams that preserved affordability for the very poor.[176] Class action race discrimination suits brought in cities like Chicago and Baltimore[177] resulted in large-scale desegregation programs that paved the way for mobility programs.[178] San Francisco residents waged a multi-year campaign against a redevelopment initiative in the 1990s, holding high-profile protests, going door-to-door to recruit resident activists, and refusing to relocate until the local agency made certain concessions; over 60% of residents reportedly participated in these activities, resulting in significantly fewer people being forcibly displaced.[179] From 2013 to 2014, Seattle residents picketed, held demonstrations, made media appearances, and built alliances with

175. *See* Curtis et al., *supra* note 168.

176. *See* Peter W. Salsich, Jr., *Does America Need Public Housing?*, 19 GEO. MASON L. REV. 689, 695–96 (2012).

177. Florence Roisman refers to litigation brought in these and other cities: Texarkana, Arkansas; East Texas; Dallas; Commerce, Texas; Galveston, Texas; Buffalo, New York; Omaha, Nebraska; Minneapolis, Minnesotta; New Haven, Connecticut; and Allegheny County (Pittsburgh), Pennsylvania. *See* Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 343–46 (2007) [hereinafter Roisman, *Affirmatively Furthering Fair Housing*].

178. *See infra* Part V.

179. *See* James Tracy, *Hope VI Mixed-Income Housing Projects Displace Poor People*, RACE, POVERTY, AND THE ENVIRONMENT (Spring 2008) http://reimaginerpe.org/node/1811.

community groups and city council members[180] to prevent a dramatic rise in rents.[181]

Countless other examples exist.[182] While not all such efforts result in change, public housing has been altered by grassroots activism, bolstered by rights to notice-and-comment and rights to organize, and by support from community organizers and legal and policy advocates at both the local and national levels.

When local advocacy leads to dignitary protections being implemented at a particular housing site, those protections are sometimes later incorporated into federal law and made broadly applicable to public housing nationwide via statute, regulations, and/or sub-regulatory materials. Some of the innovations described below, for example, were derived from resident activism in St. Louis or Chicago. These innovations are hard-won gains, yet they do not always produce real benefits. As dignitary rights developed in one city are rendered into generally applicable law, then put into practice at other sites, the power to protect dignity often gets lost. Among the reasons for this loss is that the original intent of these laws is often undermined by culturalism.

Dignity initiatives are categorized into two groups as described below. Mechanisms of "voice" offer residents extended rights of self-expression only, while mechanisms of "choice" provide residents with a significant degree of decisional power.

a. Dignity Through Voice

The exercise of "voice" can be defined as a resident's engagement with her landlord through channels of communication protected by law for the purpose of participating in the control and governance of her housing. Mechanisms of voice in public housing echo

180. *See* Steve Leigh, *A Public Housing Victory In Seattle*, SOCIALIST WORKER (Jan. 5, 2015), http://socialistworker.org/2015/01/05/public-housing-victory-in-seattle; Danielle Palmer-Friedman, *"Stepping Forward" Takes a Step Back*, DAILY OF UNIV. OF WASH. (Dec. 23, 2014, 12:00 am), http://www.dailyuw.com/news/article_4a9c4b0d-5c68-5aa0-9737-22494e88f05d.html.

181. *See Major Victory: Tenant Movements Puts Brakes on the Seattle Housing Authority "Stepping Forward" Rent Hike*, SHA TENANTS ORG. PROJECT (Dec. 22, 2014), https://stopsha.wordpress.com/2014/12/22/major-victory-tenant-movement-puts-brakes-on-seattle-housing-authority-stepping-forward-rent-hike/.

182. Litigation in the context of welfare also resulted in consent decrees aimed at extending dignitary protections for applicants. *See* Bennett, *No Relief*, *supra* note 55, at 2204–09.

the principles reflected in the Court's due process rulings,[183] but extend well beyond the Court's mandates.

i. Representative Bodies

In the 1990s, numerous channels were established for residents to offer their input to local agency officials concerning housing policy and activities. At least one eligible resident must have a seat on the governing board of the local agency,[184] and she "must be allowed to take part in the administration, operations, and management of public housing."[185] Residents are also entitled to speak collectively through at least three formally recognized organizations. The Resident Advisory Board (RAB), whose members must "adequately reflect and represent" the entire community,[186] is the official resident respondent for notice-and-comment procedures,[187] as discussed below. Local agencies "must consider" RAB recommendations[188] and also must report to HUD on how it addressed those recommendations.[189]

A second organization that must be "recognized" by local agencies has broad powers with respect to a particular housing complex. The role of the Resident Council[190] is to "advise and assist in all aspects of . . . operations"[191] with respect to a specific site. The agency must "ensure strong participation" and "work in partnership" with the Council through "regularly scheduled meetings."[192] Significantly, Resident Councils also receive federal funding for education, training, and other activities supporting resident involvement in the governance of their housing.[193] If an established

183. *See* Bennett, *No Relief*, *supra* note 55, at 2184 ("Of all the beliefs *Goldberg v. Kelly* expresses, the one that has resonated loudest and farthest is that justice for the welfare recipient depends on protection of her power to engage the dispenser of benefits—and to dictate the terms of that engagement.").

184. *See* 24 C.F.R. § 964.415(a).

185. 24 C.F.R. § 964.430. There are some exceptions to this rule, *see* § 964.430(a)(2)(i) and (ii), and exceptions described in this section exist for small agencies that do not manage significant numbers of units, *see* 24 C.F.R. § 964.425.

186. 24 C.F.R. § 903.13(a).

187. *See* 42 U.S.C. § 1437c-1(e).

188. 24 C.F.R. § 905.300(b)(4).

189. *See id.*; *see also* 24 C.F.R. § 903.13.

190. *See* 24 C.F.R. § 964.105.

191. 24 C.F.R. § 964.100.

192. 24 C.F.R. § 964.105.

193. *See* 42 U.S.C. § 1437g(e)(1)(E) and (h)(1); *see also* 24 C.F.R. § 990.108(e) and § 964.150.

organization does not exist, then funding is applied to support organizing activities; affirmative protections for organizing even exist in some privatized public housing, which specify permitted activities as including canvassing, use of meeting space, and working with nonresident organizers.[194]

A third organization, the jurisdiction-wide Resident Council, has certain powers with respect to all of an agency's housing sites. It is "recognize[d] as the voice of authority-wide residents for input into [agency] policy-making"[195] and is comprised either of the presidents of the site-specific Resident Councils, or of people elected either by all Resident Councils or by all residents at all sites.[196]

ii. Local Notice-and-Comment

Voice is also exercised through mandatory local notice-and-comment processes. As noted, the Supreme Court's rulemaking decisions govern the Administrative Procedure Act,[197] which does not apply to local agencies. However, Congress requires that local agencies comply with notice-and-comment procedures similar to those required under the APA.[198] Resident advocacy has helped expand what kinds of agency actions are subject to these procedures, providing broader rights to information and input about the decisions that affect their lives.

Local notice-and-comment procedures require the publication of materials in advance of a public hearing. The procedures are triggered annually, when each agency announces its plans for the upcoming year[199] and proposes changes to operational policies, such as lease requirements, maintenance obligations, rent rates, eligibility standards for new admittees, waiting list and unit transfer policies, and house rules.[200] These changes are of crucial interest to residents as they govern, among other things, the cost of their housing and the circumstances under which they can be evicted.

194. *See RAD Notice*, *supra* note 119, at 93–98.
195. 24 C.F.R. § 964.105(a).
196. 24 C.F.R. § 964.105(a).
197. *See infra* Part III.b.iii.
198. *See* 42 U.S.C. § 1437p(b)(2); 24 C.F.R. § 970.4(a); 24 C.F.R. § 970.8(e).
199. *See* 24 C.F.R. § 903 (2015); 24 C.F.R. § 905 (2015).
200. *See* 42 U.S.C. § 1437c-1(e).

Local notice-and-comment is also triggered whenever an agency plans to redevelop,[201] demolish,[202] or privatize public housing.[203] These plans have a severe impact on residents, forcing them to relocate on a schedule that is outside of their control. Being ejected from home, losing ties with neighbors, having daily routines of work or school disrupted, and needing to re-establish relationships with schools, transportation networks, and medical services are extremely challenging life events, especially for those with children or who are elderly, disabled, or ill. Finding a replacement unit itself can be difficult, especially when other relocatees are simultaneously seeking new units. Additionally, this search is particularly difficult for those with special physical needs, larger families, weak credit histories, no funds for a security deposit, or police records,[204] as they face particular hardship in securing alternative housing. While federal law provides financial and other assistance in cases of forced relocation, compliance can be spotty and the relocation process can be difficult, chaotic, and poorly managed.[205]

Thus, the right to notice-and-comment can be critical to residents' well-being. At a minimum, they enable residents to gain advance knowledge of what their future holds, object to agency plans, and demand additional information and support.

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201. *See* 24 C.F.R. § 903 (2015); 24 C.F.R. Part 905; NOTICE PIH 2012-7 (HA) (Feb. 2, 2012) (explaining that notice-and-comment for redevelopment is triggered under the Annual Plan requirements).

202. *See* United States Housing Act of 1937, § 18, 50 Stat. 888 (1937); 24 U.S.C. § 570; 24 C.F.R. § 970 (2015); *see also* Notice of Proposed Rulemaking, 79 F.R. 200 (Oct. 16, 2014), http://www.gpo.gov/fdsys/pkg/FR-2014-10-16/pdf/2014-24068.pdf; Marvin Krislov, *Ensuring Tenant Consultation Before Public Housing Is Demolished or Sold*, 97 YALE L.J. 1745 (1988).

203. *See, e.g.*, RAD Notice, *supra* note 119, at 29, § 1.6B.3 & n.22.

204. For discussions of the general private-sector practice of "blacklisting" any tenant named as a defendant in an unlawful detainer action, see Gary Williams, *Can Government Limit Tenant Blacklisting?*, 24 SW. U. L. REV. 1077 (1995), and Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344 (2007).

205. At Chicago HOPE VI sites, for example, the local agency failed to track thousands of residents during the relocation process. *See Where Did Relocated Public Housing Tenants Go? CHA Report Details*, CHI. SUN TIMES, Apr. 15, 2011, http://madamenoire.com/109347/where-did-relocated-public-housing-tenants-go-cha-report-details/; *When Hope Falls Short: Hope VI, Accountability, and the Privatization of Public Housing*, 116 HARV. L. REV. 1477, 1497 (2003) (stating that Chicago Housing Authority started tracking residents only three years after the grant was awarded).

iii. Beyond Notice-and-Comment

Beyond traditional notice-and-comment, residents sometimes enjoy other rights to engage with agency officials concerning major redevelopment or privatization projects. Through activism and class action lawsuits, residents in Chicago agitated for extensive participation rights with respect to redevelopment plans.[206] The court settlement required the agency and the residents to agree on all aspects of the redevelopment and permitted residents to petition the court for a hearing if agreement was not reached.[207] HUD incorporated some similar, though much weaker, consultation rights into rules applicable to redevelopment projects being undertaken across the nation.

Consultation rights in the HOPE VI redevelopment program illustrate these types of rights. The HOPE VI program, started in 1993, required agencies to apply for federal grants through a competitive process.[208] At times, HUD awarded applicants more points for consulting with residents when designing and implementing redevelopment projects. In the early years, requirements were relatively robust. Agencies had to demonstrate that they had "consulted" and "involved" residents in determining both the scope and type of redevelopment, and that they "gave full consideration" to residents' perspectives.[209] Residents assisted with defining many key issues: problems to be addressed through redevelopment, how to address them, which units should be demolished and which should not, the supportive services to be provided, the empowerment opportunities to be made available to residents, and issues regarding the design of the new housing project.[210]

As the program grew and expanded, consultation rights quickly diminished, although HUD occasionally showed interest in

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206. *See* Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons from Chicago's Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL'Y 117, 165–71 (2009) (describing activism and litigation in Chicago in the early and mid-1990s that led to broader resident participation rights).

207. *See* William P. Wilen, *The Horner Model: Successfully Redeveloping Public Housing*, 1 NW. J. L. & SOC. POL'Y 62, 77 (2006) (providing the real estate developer's account of the successful redevelopment process, emphasizing the residents' enforceable participation rights, and comparing them to the weaker protections available at other Chicago sites).

208. *See* DEP'T OF HOUSING & URBAN DEV., NOTICE OF HUD'S FISCAL YEAR (FY) 1993 NOTICE OF FUNDING AVAILABILITY (NOFA) (1993).

209. DEP'T OF HOUSING & URBAN DEV., NOTICE OF HUD'S FISCAL YEAR (FY) 2010 NOTICE OF FUNDING AVAILABILITY (NOFA) (2010), at 9.

210. *See id.*

extending resident voice. For example, HUD sometimes awarded more points to agencies that created local community task forces with extensive consultation rights[211] and that affirmatively incorporated resident input into plans[212] or otherwise proved that they adequately addressed resident concerns.[213] Such requirements were unusual, however, and by 2002, consultation meant merely "providing information"[214] rather than collective project design and problem-solving.

iv. Culturalist Challenges to Voice

The exercise of voice can have tangible benefits. For example, consultation in Rhode Island, residents secured Spanish interpretation and translation services to be employed in the notice-and-comment process so that all residents could engage in housing decisions, including a plan to demolish their housing.[215] But in these cases and others, changes did not flow merely from official mechanisms of voice alone. Voice appears to be most effective only when combined with forms of advocacy outside of officially-sanctioned channels of communication, such as mobilization or lawsuits.[216]

One reason for this is that voice provides only the opportunity to offer input, and does not assure residents any influence, control, or

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211. *See* DEP'T OF HOUS. & URBAN DEV., PUBLIC HOUSING DEMOLITION, SITE REVITALIZATION, AND REPLACEMENT HOUSING GRANTS: HOPE VI REVITALIZATION GRANT AGREEMENT REVISION (FY 1999) 15 (describing the grantee's obligation to convene a community task force).

212. *See* Dep't of Hous. & Urban Dev., Notice of HUD's Fiscal Year (FY) 1999 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing (Hope VI Revitalization), 63 Fed. Reg. 15577 (Mar. 31, 1998).

213. *See* Dep't of Hous. & Urban Dev., Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2002, 65 Fed. Reg. 9322, 9323 (Feb. 24, 2000).

214. Dep't of Hous. & Urban Dev., Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grant Programs for Fiscal Year 2002, 67 Fed. Reg. 13826, 13956 (2002).

215. *See* Heather Freinkel, *HUD Determines 180 Public Housing Units Ineligible for Demolition*, 41 HOUSING LAW BULLETIN 11 (October 2011), http://nhlp.org/files/Woonsocket%20Article.pdf (reporting that HUD declined to immediately approve a 2010 demolition request by the Woonsocket Housing Authority because of resident concerns about both inadequate consultation and Fair Housing Act compliance).

216. *See id.*; Alexander, *supra* note 206, at 174, 178–80 (arguing for dialogic or participatory mechanisms to be combined with traditional mechanisms such as judicial intervention and administrative appeals, and proposing such a framework in the HOPE VI context).

decisional power over outcomes. For example, a resident may sit on the board of the housing agency and hold voting power equal to that of other board members, but cannot unilaterally change the outcome of a board vote. Requirements that residents be "consulted" or "involved," and that they be permitted to "participate," "advise," "counsel," and "provide recommendations" that are to be afforded "full consideration," similarly withhold decisional power. Mechanisms of voice are thus purely procedural and offer residents no guarantee that their input will change the status quo.

As mechanisms of voice do not afford residents decisional power, voice is highly susceptible to being undermined by culturalism. Residents who are discredited and stigmatized for their poverty have little chance of effectively negotiating with agency officials or developers who retain all of the formal decision-making power. In addition, the agency controls access to shelter, exponentially deepening this power imbalance and chilling engagement by residents.

The subversive effects of power imbalances on dialogic processes[217] have been explored by scholars focused on the ability of less powerful groups to engage in participatory governance systems. Joel Handler suggests that for dependent people to meaningfully engage in discussions with the state, power must first be redistributed by dedicating resources to the group and by structuring negotiations to create the potential for material benefits to be gained by both sides.[218] Another approach suggests that for dialogic processes to succeed, each side's contribution to a common goal must be recognized and supported through power-shifting mechanisms.[219] Under such theories, residents can only have meaningful voice if they gain resources or bargaining power. If residents do not have power to overcome culturalist disregard, mechanisms of voice will almost certainly fail to produce meaningful benefits.

Culturalism's hallmarks of control and subordination are woven into the mechanisms of voice themselves. For instance, resident

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217. *See* Wendy A. Bach, *Governance, Accountability, and the New Poverty Agenda*, 2010 WIS. L. REV. 239, 267 (2010); Wendy A. Bach, *Welfare Reform, Privatization, and Power: Reconfiguring Administrative Law Structures from the Ground Up*, 74 BROOK. L. REV. 275, 317–18 (2009).

218. *See* JOEL F. HANDLER, LAW AND THE SEARCH FOR COMMUNITY 9, 20–21, ch. 7 (1990); JOEL F. HANDLER, DOWN FROM BUREAUCRACY: THE AMBIGUITY OF PRIVATIZATION AND EMPOWERMENT, ch. 6 (1996).

219. *See, e.g.*, Jaime A. Lee, *"Can You Hear Me Now?": Making Participatory Governance Work for the Poor*, 7 HARV. L. & POL'Y REV. 405, 407 (2013) [hereinafter Lee, *Can You Hear Me Now*].

input must be channeled through prescribed outlets in order to be recognized. Residents are required to speak through organizational bodies and with a unified voice, regardless of the diversity of perspectives that may exist. In some cases, agency officials may choose who represents the residents,[220] making voice subject to government manipulation. If multiple organizations exist, the agency may decide which receive funding and which do not.[221]

Evidence from the field suggests some of the challenges faced by residents in influencing outcomes through deliberative processes. Accounts of engagement in participatory systems reflect significant anger, frustration, fear, and distrust on the part of residents.[222] One report described a resident organization meeting in San Francisco run entirely by agency officials who may have intimidated activist residents from participating while also downplaying resident testimony in the meeting notes.[223] Another study found that some nonresidents viewed the point of resident participation not as engaging in dialogue, but merely as sharing information and teaching residents how to be "less confrontational."[224]

By suppressing or discrediting voice, culturalism can severely undermine or even nullify the value of voice.[225] The ineffectiveness of voice may help explain why public housing residents often opt out of these systems.[226] Field observations also suggest that residents may

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220. *See* 24 C.F.R. § 964.400–30 (2014) (permitting but not requiring resident control over the choice of board of directors representative); 24 C.F.R. § 903.13 (2014) (requiring the Resident Advisory Board to be comprised of certain representatives elected by residents, but also permitting the agency to designate representatives).

221. *See* 24 C.F.R. § 964.150 (2014).

222. *See, e.g.*, Alexander, *supra* note 206, at 174–75; Georgette C. Poindexter, *Who Gets the Final No?*, 9 CORNELL J.L. & PUB. POL'Y 659 (2000); Schmidt, *supra* note 157, at 333.

223. *See* Schmidt, *supra* note 157, at 347–48.

224. Mark L. Joseph & Robert J. Chaskin, *Mixed-Income Developments and Low Rates of Return: Insights From Relocated Public Housing Residents in Chicago*, 22 HOUSING POL'Y DEBATE 377, 394–96 (2012), http://www.tandfonline.com/doi/abs/10.1080/10511482.2012.680479.

225. Administrative and judicial enforcement of residents' participation rights are all but non-existent. *See* Lee, *Rights at Risk*, *supra* note 105, at 786.

226. *See* Dep't of Hous. & Urban Dev., *Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default*, 73 Fed. Reg. 49544-01 (proposing the elimination of the resident services and satisfaction indicator and temporarily suspending its use because it "has not yielded the degree of feedback that HUD hoped to obtain from this indicator"); Dep't of Hous. & Urban Dev., *Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System*

not participate because they fear landlord retaliation,[227] are deterred by other burdens of participation, and may have concerns about co-optation, acquiescence, or domination by representatives.[228] But when residents choose not to engage, culturalists may view this as affirmation that the poor lack the motivation to improve their situations, arguing that if the poor do not take opportunities to engage, the government has no obligation to address their interests. Alternatively, if residents choose to engage in ways outside of formally sanctioned channels of voice, culturalism may argue that they are not abiding by the rules of engagement, yet again justifying nonresponsiveness on the part of the government.

b. Dignity Through Choice: Resident Management

In contrast to voice, mechanisms of "choice" offer residents significant decisional power and autonomy. A degree of control or autonomy is viewed as fundamental to dignity,[229] and its significance is especially apparent in the public housing context, where residents have little control over their living environment.

In recent decades, federal law has supported resident autonomy primarily through two sets of initiatives. The section below explores the first set of programs, which supported residents in taking control over the day-to-day management of their housing. While this type of activity no longer takes place, its history provides lessons for the future. The other type of choice enables residents to exercise more choice over where they live through "mobility" programs and is discussed extensively in Part V.

(PHAS) and Determining and Remedying Substantial Default, 76 Fed. Reg. 10147 (eliminating the survey in the interim rule because it "does not have a sufficient completion rate overall to be useful").

227. *See* Schmidt, *supra* note 157, at 336.

228. *See* Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 303 (Austin Sarat & Stuart Scheingold eds. 2006) (arguing that collaborative negotiation models may lead to quiescence); JOEL F. HANDLER, LAW AND THE SEARCH FOR COMMUNITY, 21–28 (1998) [hereinafter Handler, *Law and Community*]; Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons From Chicago's Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL'Y 117, 163–64 (2009) (reporting Chicago residents' suspicions of representative acquiescence and cooptation); Poindexter, *supra* note 222, at 667 (describing dominant leadership by one resident in a participatory process in Atlanta).

229. *See supra*, note 45.

i. Experiments

Public housing management duties are usually delegated to local agency staff who handle daily operations like rent collection, maintenance, evictions, developing and administering house rules, and other matters where federal law permits local housing agencies to exercise discretion. Experiments in transferring some management duties to residents began at around the time of the due process revolution,[230] when residents in New York, St. Louis, and other cities protested the indecency of their living conditions and sought direct resident control over housing operations.[231] Small-scale exploratory programs further inspired the Ford Foundation to support additional programs in six different cities around the country.[232]

Programs expanded in the 1980s, as another foundation funded resident takeovers by twelve resident groups,[233] and Congressman-turned-HUD Secretary Jack Kemp launched a national campaign to encourage resident management, with the ultimate goal of transferring legal title to the housing to residents.[234] From 1988 to 1998, HUD distributed $80 million[235] in support of this goal, funding hundreds of resident organizations nationwide and reaching tenants at a majority of the country's larger agencies.[236]

The results of these efforts were mixed. Many resident organizations did not succeed in taking over full or partial operations, but others thrived.[237] On the one hand, these programs demonstrated that, in some cases, resident groups could not only successfully manage their own housing but could even outperform the government at some tasks.[238] Studies by the Ford Foundation and other organizations suggested that successful projects commonly had strong organizations,

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230. *See* Anne Marie Smetak, *Private Funding, Public Housing: The Devil in the Details*, 21 VA. J. SOC. POL'Y & L. 1, 22 (2014).

231. *See* Salsich, *supra* note 176; Handler, *Down From Bureaucracy*, *supra* note 218, at 156–62.

232. *See* Susan Bennett, *"The Possibility of a Beloved Place": Residents and Placemaking in Public Housing Communities*, 19 ST. LOUIS U. PUB. L. REV. 259 (2000) [hereinafter Bennett, *Beloved Place*].

233. *See id.* at 288.

234. *See* MICHAEL STEGMAN, MORE HOUSING, MORE FAIRLY: REPORT OF THE TWENTIETH CENTURY TASK FORCE ON AFFORDABLE HOUSING, BACKGROUND PAPER ON THE LIMITS OF PRIVATIZATION 27 (1991); Stephen B. Kinnaird, *Public Housing: Abandon Hope, But Not Privatization*, 103 YALE L.J. 961 (1994).

235. *See* Bennett, *Beloved Place*, *supra* note 232.

236. *See* Stegman, *supra* note 234, at 83 *et seq.*

237. *See* Handler, *Law and Community*, *supra* note 228.

238. *See* Bennett, *Beloved Place*, *supra* note 232, at 286.

robust resident participation, ties to supportive groups that were independent of the local agency, and sufficient training.[239]

On the other hand, many resident groups experienced challenges. Collective governance of a shared, vital asset like housing is difficult. Of those groups that succeeded, few could sustain their activities once significant federal or foundation funding and other support were withdrawn.[240] Although the law still offers residents a right of first refusal to purchase and manage their building when it is offered for sale,[241] resident control today is not a truly viable option.

ii. Culturalist Challenges to Choice

While little remains of resident management initiatives, the sustained support that they provided for resident autonomy is striking. Culturalism generally restricts autonomy for the poor, yet autonomy became a centerpiece of federal public housing policy in a Republican-led era when the "welfare queen" was a central theme in poverty discourse. This can be explained by viewing resident management initiatives as an expression of the culturalist impulse to reform the poor.

Susan Bennett explains three distinct inspirations for the resident management movement.[242] One motivation was to improve residents' quality of life and make government more accountable. Another centered on community organizing and empowering the resident community through collective action. And a third sought to transform residents, both behaviorally and attitudinally, through homeownership-like activities that required them to take responsibility for their living environment.[243] The third goal is both consistent with culturalist ideology and the government's primary motivation. As early as 1968, HUD saw resident management initiatives as instilling "pride of ownership . . . and a sense of responsibility and status" among residents.[244] Federal support reached its height under Secretary Kemp, driven by his belief in

> the transformative effects of homeownership and freedom from government dependency . . . . [His initiatives] would 'tear down the walls that come

239. *See id.* One estimate suggested that up to 1,000 hours of training were needed. *See* Stegman, *supra* note 234, at 83.

240. *See* Bennett, *Beloved Place*, *supra* note 232, at 289–90.

241. *See* 42 U.S.C. § 1437p(c) (2015); 24 C.F.R. § 970.13 (2010).

242. *See* Bennett, *Beloved Place*, *supra* note 232, at 284–85.

243. *See id.*

244. Smetak, *supra* note 230, at 22.

> between people and their self-respect . . . and prevent people from exercising their talents and reaching their potential.' . . . . Kemp was after the hearts and minds of the tenants. His was a deeply ideological vision.[245]

Similarly, another conservative supporter of the program envisioned resident management as "changing tenants' behavior from destructive to constructive . . . and inspiring their neighbors" to do the same.[246]

Resident management initiatives can thus be read through a culturalist lens. Where residents sought autonomy, dignity, and better housing, Kemp and other culturalists saw a population in need of the ethics of work, responsibility, and homeownership, and an opportunity for personal and collective reformation.

There are a number of implications to the appropriation of this dignitary initiative by culturalist ideology. First, autonomy that is exercisable only in one prescribed manner seems inconsistent with the classical notion of autonomy, in which "the individual determines his or her own course of action in accordance with a plan chosen by himself or herself."[247] Yet here, the benefits of autonomy still seem relatively intact. That is, regardless of Kemp's motives, residents who opted into the program still managed to secure both funding and some autonomy over their environment. As self-managers, they might have exercised that autonomy in ways that rebuffed culturalism, such as by halting demeaning management policies and providing more supportive services.[248]

Thus, it might seem that culturalism is less functionally subversive in matters of choice than in matters of voice. In voice, those in control can easily nullify any benefits by suppressing or rejecting voice. In contrast, in choice, the autonomy that is granted remains meaningfully exercisable by those who have successfully opted into self-management. But this autonomy is available only to those willing and able to invest an astounding amount of time and energy.

Moreover, an even greater hazard exists for those who cannot succeed at the herculean task of self-management or who have otherwise chosen to opt out. For these communities, there is no alternative but to continue suffering from substandard housing conditions. The culturalist perspective finds this fitting, since it views

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245. Kinnaird, *supra* note 234, at 962.

246. Stegman, *supra* note 234, at 89.

247. Handler, *Law and the Search for Community*, *supra* note 218, at 15 (citations omitted).

248. *See* Stegman, *supra* note 234, at 83.

these residents as irresponsibly rejecting or failing to take advantage of the opportunity for betterment, and as thus undeserving of other forms of relief. Culturalism's focus on personal reformation thus leaves the primary problem unaddressed—that is, substandard housing conditions.

In addition, by placing the burden on the poor to resolve their own hardships, culturalism denies government responsibility for the problems the poor experience. On the local level, this means that if residents don't opt in and take responsibility, the housing simply goes unfixed. At the national policy level, it means that the government divests itself more broadly of its obligations to house the poor. Indeed, Kemp was accused by a contemporary of promoting a hidden agenda of "ending public ownership of public housing, and [of] cloak[ing] that agenda in the rhetoric of empowerment."[249] It is not a coincidence that around this time, HUD itself was at risk of being dismantled by Congress, and that public housing around the country was being closed for inhabitability caused by a lack of funding and neglect.[250] Reducing the obligations of government was a larger goal of the times, and resident management initiatives were being used to hasten this goal.

V. EXTENDING DIGNITY THROUGH MOBILITY

These examples from decades past demonstrate the persistently subversive power of culturalism. These experiences serve as a warning to today's policymakers to actively resist the threat of culturalist corruption as they shape the future of the public housing program. The threat is especially strong in the context of housing mobility.

"Mobility" means giving public housing residents greater choice over where they live and providing increased access to safer neighborhoods with better public services that are otherwise reserved for the wealthier. Like the resident management initiatives discussed above, mobility is a mechanism of "choice" that seeks to promote the dignity of residents by promoting their autonomy. Like other dignity initiatives, however, mobility is also susceptible to a culturalist reading that threatens to severely undermine its effectiveness.

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249. *Id.* at 89 (quoting Gordon Cavanaugh of the Council for Large Public Housing Authority); *see also* Robert Bodzin, *Is There Hope? An Analysis of How Premature Tenant Homeownership Policies Threaten the Housing Rights of Low Income Persons and Families on Waiting Lists for Section 8 Housing*, 4 HOFSTRA PROP. L.J. 239, 254 (1992); Schill, *supra* note 158; Kinnaird, *supra* note 234.

250. *See* Powell, *supra* note 158.

a. Context

Traditionally, public housing benefits entitle a person to live in housing that is owned by the government and fixed in location. Mobility programs generally convert public housing benefits into benefits with locational flexibility, and in this way resemble "voucher" or "tenant-based Section 8" benefits. Section 8 of the U.S. Housing Act of 1937 encompasses a wide variety of programs, but it is best known for paying subsidies to private landlords who house low-income tenants. [251] Under tenant-based Section 8, voucher benefits can be applied to privately owned units, which would otherwise be rented on the open market, as long as the landlord agrees to accept the subsidies and follow program rules. Today, a voucher tenant can even transfer her benefits across jurisdictions,[252] meaning that she can bring her benefits across city or state lines without having to reapply.[253] Thus, mobility programs, which convert public housing benefits into benefits with locational flexibility, drastically expand housing choices for public housing residents.[254]

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251. *See* 42 U.S.C. § 1437f (2014) (authorizing legislation for an array of programs, each of which has different requirements; most programs meet the general description found in THE NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS, TENANTS' RIGHTS § 1.2.5 (4th ed. 2012)).

252. *See* 42 U.S.C. § 1437f(r); 24 C.F.R. §§ 982.4 and 982.353(b); U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER GUIDEBOOK (7420.10G), 13-1, http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/index.cfm.

253. Transferability or "portability" of benefits is especially valuable as waiting lists are often closed and the number of applicants far exceed the number of vouchers funded by Congress. *See* John J. Infranca, *Housing Resource Bundles: Distributive Justice and Federal Low-Income Housing Policy*, 49 U. RICH. L. REV. 1071, n.5 (2015). For a discussion of barriers to portability, see Stefanie DeLuca et al., *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families*, 647 ANNALS AM. ACAD. POL. & SOC. SCI. 268, (2013); Susan Bennett, *The Threat of the Wandering Poor: Welfare Parochialism and Its Impact on the Use of Housing Mobility As an Anti-Poverty Strategy*, 22 FORDHAM URB. L.J. 1207, 1228 (1995). For recent changes to the portability regulations, see Dep't of Hous. & Urban Dev., 80 Fed. Reg. 161 (August 20, 2015) (to be codified at 24 CFR pt. 982), http://www.gpo.gov/fdsys/pkg/FR-2015-08-20/html/2015-20551.htm.

254. The Section 8 or Housing Choice Voucher program itself is sometimes viewed as a mobility program. Others do not apply that term because Section 8 does not usually include counseling support or other forms of assistance that make mobility programs more effective. *See infra,* Part V.e. For simplicity, in this article the term "mobility programs" refers only to programs that convert traditional public housing benefits to a form of benefits with locational flexibility, regardless of whether they include counseling support or other assistance. Although this article

Mobility programs support the dignity and autonomy of residents in the sense that "[t]he ability to choose where to live and with whom to associate is linked to the idea of freedom in the American popular imagination."[255] This particular type of freedom is especially powerful when it enables a poor person to move from a desperately underserved neighborhood, lacking fundamental necessities such as public safety and quality public schools, to what is sometimes termed a "neighborhood of opportunity."[256] The great allure of mobility programs is that they might enable poor people to escape the deprivations associated with race-based and income-based housing segregation.[257] In addition, they may increase cross-cultural exposure between whites and blacks, potentially decreasing racial bias and tension. Moreover, they may help to diffuse the harmful consequences of poverty among a broader segment of society, making its impact less concentrated and less severe.[258]

b. Experiments

A number of large-scale experiments have offered mobility benefits to public housing residents. It should be noted at the outset that the public housing program is in large part responsible for creating the very problems that mobility is meant to address. Public housing across the country notoriously and intentionally segregated black residents by assigning them to live in densely concentrated urban high-rise buildings.[259] Early housing mobility initiatives were in

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does not focus on the traditional Housing Choice Voucher program, many of the reforms proposed here should be applied to that program as well.

255. Michelle Adams, *Separate and (Un)equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 424 (1996).

256. *See, e.g.*, *RAD Notice*, *supra* note 119, at Attachment 1B, Section 1B.1 at 74 and Section 1.7.C.5 at 43–46 (referring to 24 C.F.R. 983.260 and pertaining to two different components of RAD, respectively); *see also, e.g.*, LEONARD S. RUBINOWITZ AND JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA (2000).

257. *See* Wilson, *The Truly Disadvantaged*, *supra* note 60; DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

258. Massey & Denton, *supra* note 257, at 128.

259. ARNOLD HIRSCH, MAKING THE SECOND GHETTO: RACE & HOUSING IN CHICAGO 1940–1960 (1983); Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government As a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PA. L. REV. 1351 (1995); *see also* Florence Wagman Roisman, *Keeping the Promise: Ending Racial*

fact court-ordered or court-approved remedies to racial discrimination propagated by local housing agencies.[260]

The landmark *Gautreaux* litigation, initiated in 1966 and formally ended thirty-two years later, relocated 7,100 families from segregated high-rise towers in Chicago under the auspices of the court, with over half of those households moving to primarily white suburbs.[261] Many other fair housing lawsuits followed *Gautreaux*'s lead in crafting remedies focused on mobility, including a 1980 suit brought against Yonkers, a wealthy suburb of New York City,[262] and the *Thompson v. United States Dep't of Hous. and Urban Dev.*[263] litigation, filed in 1995 and settled 17 years later, which focuses on encouraging mobility throughout the Baltimore metropolitan region.

Gautreaux also inspired mobility experiments outside of the courtroom. Congress directed HUD to conduct a large, randomized mobility experiment in the mid-1990s, known as the Moving to Opportunity (MTO) initiative. MTO offered vouchers to 4,600 public housing families with children living in high poverty neighborhoods in Chicago, Boston, Baltimore, Los Angeles, and New York, permitting some families to relocate to only low-poverty neighborhoods, allowing others to move to any neighborhood, and establishing a third set of families as a control group.[264]

Discrimination and Segregation in Federally Financed Housing, 48 HOW. L.J. 913 (2005).

260. *See generally* Roisman, *Affirmatively Furthering Fair Housing*, *supra* note 177.

261. *See, e.g.*, Wilson, *More Than Just Race*, *supra* note 37, at 48; Hills v. Gautreaux, 425 U.S. 284, 297 (1976) (affirming the appropriateness of the remedial order in extending mobility regionally, beyond the city lines); Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 346, 363–65 (2007) [hereinafter Roisman, *Affirmatively Furthering Fair Housing*].

262. *See United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988) (Fair Housing claims resulted in a mobility program that randomly relocated low-income black and Latino adults from poor, racially segregated neighborhoods in Yonkers, New York, to middle-class neighborhoods); *see also* Olatunde Johnson, *The Last Plank: Rethinking Public and Private Power to Advance Fair Housing*, 13 U. PA. J. CONST. L. 1191 (2011).

263. Thompson v. U.S. Dep't. of Hous. and Urban Dev., 348 F.Supp.2d 398, 413 (D.Md. 2005); *see also* Roisman, *Affirmatively Furthering Fair Housing*, *supra* note 177.

264. *See* Jens Ludwig, *Moving to Opportunity*, 14 CITYSCAPE: J. OF POL'Y DEV. & RES. 2 (2012); XAVIER DE SOUZA BRIGGS ET AL., MOVING TO OPPORTUNITY: THE STORY OF AN AMERICAN EXPERIMENT TO FIGHT GHETTO POVERTY (2010).

As MTO got underway, HUD also initiated the HOPE VI program, which demolished densely concentrated public housing and rebuilt it as mixed-income housing. HOPE VI dispersed large numbers of the very poor and re-housed a relatively small portion of the original residents side-by-side with people with higher incomes. HOPE VI is usually referred to as a mixed-income program, not as a mobility program, and, as noted, its approach was highly controversial. HOPE VI and other mixed-income research is sometimes seen as relevant to mobility, however, since both experiment with residential integration.

The largest mobility experiment to date is HUD's latest initiative, the Rental Demonstration Program, which is a public housing privatization program that includes a mobility option.[265] The demonstration program was expanded in 2014 to cover 180,000 households, and may well be expanded nationwide.[266]

Two recent and significant legal developments may generate additional momentum behind mobility programs. The Fair Housing Act requires HUD and local jurisdictions to "affirmatively further fair housing,"[267] a provision that has long been dormant. In 2015, however, HUD issued regulations that clarify this provision and are aimed at "replacing segregated living patterns with truly integrated and balanced living patterns [and] transforming racially and ethnically concentrated areas of poverty into areas of opportunity."[268] Also in 2015, the Supreme Court held that a cause of action based on disparate impact is cognizable under the Fair Housing Act.[269] Taken together, these two developments help to address weaknesses in the Fair Housing Act[270] and may inject it with new energy, possibly spurring

265. *See* Lee, *Rights at Risk*, *supra* note 105, at 774; Smetak, *supra* note 230, at 17.

266. Lee, *Rights at Risk*, *supra* note 105, at 768.

267. Fair Housing Act, 42 U.S.C. § 5304(b)(2) (2009).

268. Dep't of Hous. & Urban Dev., Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42271 (2015), https://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf.

269. *See* Texas Dep't of Hous. & Cmty Affairs v. Inclusive Comtys. Project, Inc., 135 S. Ct. 2507, 2510 (2015).

270. *See* Stacy E. Seicshnaydre, *The Fair Housing Choice Myth*, 33 CARDOZO L. REV. 967, 968 (2012) (concluding that the Fair Housing Act, without regulations, did not effectively address white resistance to mobility, offering only an "exit strategy" from ghettoes without the necessary "entrance strategy"); *see also* Editorial, *The End of Federally Financed Ghettos*, N.Y. TIMES. (July 11, 2015), http://www.nytimes.com/2015/07/12/opinion/the-end-of-federally-financed-ghettos.html.

new mobility initiatives both within the public housing program and elsewhere at the local level.[271]

c. Research

Mobility experiments have generated significant data comparing the before-and-after statuses of movers. It is difficult to generalize, but many analyses support the general idea that environment affects a person's chances in life, although theories vary widely as to exactly how environment matters. The early mobility experiments provide an example of the complexities inherent in this work. *Gautreaux* results were generally positive, showing significantly better rates of employment and college attendance among relocatees as well as lower school dropout rates.[272] But a 2011 analysis from the MTO program told a different story, concluding that relocation had little impact on job rates or school success.[273] Scholarly reaction to the divergent results was described as "contentious and somewhat politicized,"[274] with supporters and opponents of mobility each attempting to explain the results by pointing out various flaws in project design or assessment strategies. Another study, published in 2015, is described as "vindicating" MTO; it focused on MTO children who had relocated at a younger age and assessed them at a later point in life; it found that they did in fact experience an increase in income earnings and college attendance rates.[275]

Overall, mobility and related studies are voluminous, diverse in their conclusions, and raise a startlingly broad range of unanswered questions. This point is illustrated by a brief look at just a few studies

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271. For examples of mobility programs implemented by local jurisdictions, see HOUSINGMOBILITY.ORG, http://www.housingmobility.org/ (last visited Feb. 28, 2016).

272. *See* Wilson, *More Than Just Race*, *supra* note 34, at 50.

273. U.S. DEPT. OF HOUS. AND URB. DEV'T, MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM FINAL IMPACTS EVALUATION (Nov. 2011), http://www.huduser.org/publications/pdf/MTOFHD_fullreport_v2.pdf; *see also* Lisa A. Gennetian et al., *The Long-Term Effects of Moving to Opportunity on Youth Outcomes*, 14 CITYSCAPE: A J. OF POL'Y DEV. & RES. 137, 140 (2012).

274. Thomas Edsall, Op-Ed, *Does Moving Poor People Work?*, N.Y. TIMES (Sept. 16, 2014), http://www.nytimes.com/2014/09/17/opinion/does-moving-poor-people-work.html.

275. *See* Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence From the Moving to Opportunity Experiment* (May 2015), http://www.equality-of-opportunity.org/images/mto_paper.pdf; *see also* Jonathan Rothwell, *Sociology's Revenge: Moving to Opportunity (MTO) Revisited* (May 6, 2015), http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/05/06-moving-to-opportunity-revisited-rothwell.

chosen from perhaps many hundreds. For example, a study of the Yonkers, New York program found positive adult employment outcomes and less welfare dependency,[276] while MTO found no such changes in adults. Researchers have suggested that divergent outcomes such as these might be due to various program design and assessment choices, such as the amount of time elapsed between moving and assessment (seven years and one year, respectively, in this example), whether participants moved to neighborhoods with significantly different demographics or to neighborhoods more like their own, and other factors.[277]

The comparison of these two studies also highlights some of the complex questions mobility researchers face regarding the ultimate purpose of mobility. Should mobility ultimately focus on adults or on children? Are jobs and welfare dependency, the factors assessed in these studies, the appropriate measures of "success," or are there other valuable indicators? Since the Yonkers program focused on racial desegregation and MTO only focused on income desegregation, how does that difference affect their results, and should future programs focus on race, income, or both? Questions like these illustrate the complex nature of mobility analysis.

Some research even raises fundamental questions about whether the geographic spaces known as "neighborhoods" are in fact to blame for the harms suffered by poor people. In some studies, researchers have documented that "toxic stress" associated with high-poverty neighborhoods damages children's cognitive development.[278] Other studies have found that poor children living in low-poverty neighborhoods made significant gains in school.[279] However, this gain in academic success is misleading, as two-thirds of those school gains

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276. *See* Rebecca C. Fauth et al., *Seven Years Later: Effects of a Neighborhood Mobility Program on Poor Black and Latino Adults' Well-Being*, 49 J. HEALTH & SOC. BEHAV. 119, 124 (2008).

277. *See* Wilson, *More Than Just Race*, *supra* note 37, at 50–51; Barbara Sard & Douglas Rice, *Creating Opportunities for Children: How Housing Location Can Make a Difference*, CENTER ON BUDGET AND POLICY PRIORITIES 24–26 (Oct. 14, 2014), http://www.cbpp.org/files/10-15-14hous.pdf.

278. *See* Sard & Rice, *supra* 277, at 15–16 (stating that toxic stress caused by living in high-poverty neighborhoods can have an especially adverse impact on children, leading to long-term effects on cognitive development that harm development in the areas of the brain that regulate emotion and executive function); Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245 (1998), http://www.ajpmonline.org/article/S0749-3797(98)00017-8/pdf.

279. *See* Sard & Rice, *supra* note 277, at 27–29.

were attributed to the improved *school environments*, not to the change in *neighborhood*.[280] An analysis of forty other studies that assessed the impact on children of "neighborhood effects," such as neighborhood ties, social control, and institutional resources, came to no conclusion about those impacts; but it did firmly conclude that other things unrelated to the *neighborhood* itself, like the family's affluence and stability, clearly had direct and significant impacts on children's success.[281] Thus, it is possible to question whether policymakers should focus on moving people to different neighborhoods at all, or whether other strategies might be more effective, such as school integration and poverty relief.

Even this brief look at a few studies suggests the range of complex issues mobility researchers must consider. Differing opinions over fundamental questions make it difficult to determine whether mobility is, overall, "effective," and why this is or is not true. Such questions are likely to be debated for years to come.

d. Culturalist Challenges to Mobility

Empirical evidence aside, it seems relatively clear on a conceptual level that mobility is closely aligned with anti-culturalism. The essential premise of mobility programs is that if an individual's environment changes, she will fare better. Mobility theory thus does not start from the premise that a person's flaws cause her poverty, nor does it necessarily assume that she must change herself in order to escape poverty. Rather, it implies that her ability to thrive depends on her external environment. Consequently, mobility can be viewed as emphasizing structural causes of poverty over personal or cultural ones.

Mobility may be aligned with a general shift in public opinion away from culturalism. A 2014 public opinion poll by NBC and the *Wall Street Journal* found a twenty-point decrease, compared to nineteen years earlier, in those who believe that poverty is primarily caused by individuals not doing enough to help themselves (44%), along with a corresponding rise in those who believe that poverty is primarily caused by factors outside an individual's control (46%).[282] The Center

280. *See id.*

281. Robert J. Sampson et al., *Assessing "Neighborhood Effects": Social Processes and New Directions in Research*, 28 ANN. REV. SOC. 443, 446, 473–74 (2002).

282. Nona Willis Arnowitz, *Poll: Fewer Americans Blame Poverty on the Poor*, NBCNEWS (June 20, 2014), http://www.nbcnews.com/feature/in-plain-sight/poll-fewer-americans-blame-poverty-poor-n136051.

for American Progress also reported in 2014 that 64% of Americans believe in structural causes of poverty, while only 25% believe that most poor people "'are poor because they make bad decisions or act irresponsibly in their own lives.'"[283]

If culturalism is indeed declining in popular opinion, it may be attributable to the broad downturn in economic prosperity[284] as well as objections to the concentration of wealth in the hands of a very few.[285] General upward socioeconomic mobility is of such broad public concern today that it has become a talking point for leading presidential candidates in both the Democratic and Republican parties.[286] It seems reasonable to hypothesize that, as more Americans suffer economic hardship, they may be looking to government for help, turning away from culturalism and towards structural explanations. Support for housing mobility might be associated with this shift.

On the other hand, it is also undeniable that housing mobility can be interpreted through a culturalist lens. HUD's rationales for the MTO and HOPE VI experiment in the mid-1990s, for example, were unambiguously culturalist. HUD explained that "[i]ncreasingly segregated and isolated from the larger society and with few perceived options, many residents of 'underclass' neighborhoods make decisions that tend to perpetuate their poverty."[287] A 1997 HUD report echoed the most controversial language of the Moynihan Report of over thirty years earlier when describing the hope that "a mixture of income levels will reduce the social pathology caused by" concentrated poverty, and that

> [t]he behavior patterns of some lower income residents will be altered by emulating those of their higher income neighbors . . . [and lead] to upward mobility.

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283. *See* JOHN HALPIN, 50 YEARS AFTER LBJ'S WAR ON POVERTY: A STUDY OF AMERICAN ATTITUDES ABOUT WORK, ECONOMIC OPPORTUNITY, AND THE SOCIAL SAFETY NET 3 (Jan. 2014), https://www.americanprogress.org/wp-content/uploads/2014/01/WOP-PollReport2.pdf.

284. *See, e.g.*, Xavier de Souza Briggs, *Entrenched Poverty, Social Mixing, and the "Geography of Opportunity": Lessons for Policy and Unanswered Questions*, 13 GEO. J. ON POVERTY L. & POL'Y 403, 405 (2006) (recognizing the role played by housing and income instability, largely driven by a shift away from an industrial economy, in perpetuating spatial stratification).

285. *See* Gilman, *One Percent*, *supra* note 3, at 391–95 (discussing the Occupy Wall Street movement).

286. David Leonhardt et al., *An Atlas of Upward Mobility Shows Paths Out of Poverty*, N.Y. TIMES (May 4, 2015), http://www.nytimes.com/2015/05/04/upshot/an-atlas-of-upward-mobility-shows-paths-out-of-poverty.html.

287. U.S. DEP'T OF HOUS. & URBAN DEV., URBAN POLICY BRIEF, RESIDENTIAL MOBILITY PROGRAMS (Sept. 1994).

> Nonworking low-income tenants will find their way into the workplace in greater numbers because of the social norms of their new environment (for example, going to work/school every day) and the informal networking with employed neighbors.[288]

Thus, there are two readings of mobility. Some believe that mobility is an affirmation of one's dignity, equality, and autonomy as a response to illegal racial discrimination. Yet mobility may also be seen as a culturalist strategy for reforming presumed deficiencies of morality and culture. Past experiences of voice and choice, in which dignitary rights have been appropriated as tools of subordination, serve as a caution. As mobility programs are pursued, it is critical to raise awareness of how culturalist assumptions might affect their design and implementation and undermine their effectiveness as an anti-poverty strategy.

Perhaps the primary risk is that mobility is viewed as an opportunity to "pull oneself up by one's bootstraps," and that if a person does not avail herself of this opportunity, then she does not deserve to escape poverty's ills. Mobility can be seen as a means of separating the strivers from the non-strivers, and the deserving from the undeserving. Those who have an opportunity to participate in mobility, but choose not to, may be left without other options.

The notion that mobility separates the deserving and the undeserving has already surfaced in the debate over mobility research. Some have argued that the *Gautreaux* litigants, who opted in to the settlement, were more likely than the average public housing resident

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288. *Id.* Overall, these theories appear to be refuted. Some researchers found no compelling evidence to support HUD's mixed-income theories, though they did find some evidence of the benefits of access to higher-quality services and greater informal social controls. Mark L. Joseph et al., *The Theoretical Basis for Addressing Poverty Through Mixed-Income Development,* 42 URB. AFF. REV. 369, 372, 386–88, 392–95 (2007); Mark L. Joseph, *Is Mixed-Income Development an Antidote to Urban Poverty?,* 17 HOUS. POL'Y DEBATE 209 (2006). Other researchers found no conclusive evidence of any of those benefits, and concluded that "the degree of neighborhood change is not statistically related to changes in individual outcomes." George C. Galster et al., *Income Diversity Within Neighborhoods and Very-Low-Income Families,* 2 CITYSCAPE: J. OF POL'Y DEV. & RES. 257, 292–93 (2008). Yet a popular press account suggests that some movers themselves embrace culturalist theory, reporting one participant as stating that "'[s]eeing people getting up every day and working, wanting to get something out of life—it taught [my family] better values' than they were exposed to in the projects." Alana Semuels, *Is Ending Segregation The Key To Ending Poverty?,* THE ATLANTIC (Feb 3, 2015), http://www.theatlantic.com/business/archive/2015/02/is-ending-segregation-the-key-to-ending-poverty/385002/.

to thrive from a change in environment because they were "self-selected," that is, they had taken the initiative to litigate and to relocate.[289] The culturalist presumption is that such strivers are anomalies among the poor, and that improved outcomes are not due to a change in environment but to their own personal will and determination. Moreover, the implication is that those who did not litigate or relocate failed to do so only because they are not similarly motivated toward success.

The culturalist reading of mobility may be bolstered by data showing that many who have an opportunity to relocate do not move to "neighborhoods of opportunity," but rather move to neighborhoods with poverty rates and racial demographics similar to their initial neighborhoods.[290] Culturist ideology views these residents as illogically rejecting opportunity for betterment and blames them for perpetuating their own poverty. In doing so, culturist ideology delegitimizes the many structural reasons that individuals may choose to relocate to neighborhoods with similar demographics rather than to "neighborhoods of opportunity."

Of the many structural obstacles that exist, some of the most important are a shortage of appropriate housing, racial discrimination, the burdens of mobility, and disagreement with the culturalist implications of mobility. First, in terms of supply, mobility's success depends on the availability of enough suitable housing located in target neighborhoods.[291] Private-sector landlords must be willing to endure bureaucratic hassles, additional inspections, and in many cases, below-market rents set by the government.[292] Other barriers include the fact that many target neighborhoods have few rental units, especially for larger families, along with the fact that new affordable units built with

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289. *See* Wilson, *supra* note 37, at 48–49.

290. *See, e.g.*, Roisman, *Keeping the Promise*, *supra* note 259, at 925–26 (while Section 8 holds promise for desegregation, it has not attained that promise and remains highly segregated); Congressional testimony of Edward Goetz, *Academic Perspectives*, *supra* note 171, at 13.

291. *See, e.g.*, Molly Thompson, *Relocating From the Distress of Chicago Public Housing to the Difficulties of the Private Market: How the Move Threatens to Push Families Away From Opportunity*, 1 NW. J. L. & SOC. POL'Y 267, 295–96 (2006).

292. Subsidy levels are often too low to enable renters to afford rents in "neighborhoods of opportunity," since they are based on the average fair market rent for an entire metropolitan region. However, HUD intends to propose calculations based on smaller geographic areas to allow for higher subsidies in certain markets. *See* Dep't of Hous. & Urban Dev., Establishing a Fair Market Rent (FMR) System, 80 Fed. Reg. 31,332 (proposed June 2, 2015) (to be codified at 24 C.F.R. pt. 888).

federal tax subsidies are also often built in poor, segregated neighborhoods.[293]

Aside from limited housing supply—which is itself an exclusionary tactic[294]—public housing residents face other steep barriers to mobility. Racial discrimination in the housing market remains rampant.[295] Moreover, culturalist attitudes toward black Americans are persistent and growing. While polls previously cited suggest that culturalism is on the wane, those polls did not ask about race. A 2014 Pew Research Center poll inquired specifically about culturalism towards blacks, and found starkly different attitudes: 63% of respondents felt that "blacks who have not gotten ahead in life are mainly responsible for their own situation,"[296] representing a 7% *increase* since 1995. Thus, even if culturalism generally may be decreasing, culturalism against blacks specifically may be rising, and

293. The program that produces the vast majority of new federally subsidized rental units, the low-income housing tax credit program, is well-known for this. *See, e.g.*, Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1753 (2005); Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Comtys. Project, Inc., 135 S. Ct. 2507, 2510 (2015).

294. *See, e.g.*, Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1147 (2008).

295. *See, e.g.*, Margery Austin Turner, *Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets*, 41 IND. L. REV. 797, 799–800 (2008); John A. Powell, *Reflections on the Past, Looking to the Future: The Fair Housing Act*, 41 IND. L. REV. 605, 613 (2008); STACY SEICSHNAYDRE & ROBERT C. ALBRIGHT, EXPANDING CHOICE AND OPPORTUNITY IN THE HOUSING CHOICE VOLUNTEER PROGRAM 4 (July 2015), https://s3.amazonaws.com/gnocdc/reports/The+Data+Center-Expanding+Housing+Choice+in+New+Orleans.pdf (reporting that in post-Katrina New Orleans, where thousands of public housing residents were given mobility vouchers because their housing was declared uninhabitable, 50 units in wealthier neighborhoods were tested for fair housing concerns and "44 percent of African American testers . . . received less favorable treatment than their white counterparts. This included property owners and managers who refused to respond to inquiries or show the apartment, failed to provide rental applications, quoted less favorable terms and incentives, and imposed stricter standards."). Even whites who identify as supporting integration largely relocate to areas that are less diverse than what they describe as their ideal neighborhood. Maria Krysan, with Esther Havekes & Michael D.M. Bader, *Diverse Neighborhoods: The (Mis)Match Between Attitudes and Actions*, 24 POVERTY & RACE 9, 9–11 (July/Aug. 2015); *see also* Adams, *supra* note 255, at 455 (discussing contradiction among whites' support for, and the resistance to, integration).

296. PEW RESEARCH CENTER, 2014 POLITICAN POLARIZATION AND TYPOLOGY SURVEY FINAL TOPLINE 8–9 (2014), http://www.people-press.org/files/2014/06/2014-Polarization-Topline-for-Release.pdf

discrimination is very likely to remain an emphatic barrier to their mobility.

In addition to challenges of supply and racial resistance, there are various other reasons public housing residents might not participate in mobility. They may simply wish to or need to remain in public housing because of the heavier burdens of relocating to privately-owned housing,[297] including the challenges of finding available housing in unfamiliar neighborhoods,[298] stricter landlord screening and behavioral controls,[299] the added costs of utilities and security deposits, and much greater housing instability, given that private landlords often can refuse to renew a lease at the end of a term, while government landlords cannot.[300]

Finally, it is critical to recognize that residents may opt out of mobility simply because they do not desire mobility as a way of life. The deprivations of poor neighborhoods are well-publicized, especially those of urban minority neighborhoods, yet many poor communities provide benefits that residents may not wish to forgo, such as ties to friends and family, familiarity, and a sense of home.[301] Residents may also fear discrimination, harassment, and isolation[302] in new neighborhoods where they are not welcome and do not "belong."[303] Such fears are not merely imaginary or theoretical; MTO studies suggest that boys who relocated suffered significantly increased rates of depression, conduct disorder, and post-traumatic stress disorder in

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297. *See* Thompson, *supra* note 291, at 281.

298. *See* Stefanie DeLuca, Philip M. E. Garboden, Peter Rosenblatt, *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families*, 647 ANNALS AM. ACAD. POL. & SOC. SCI. 268, 289 (2013).

299. *See supra* Part III.d.

300. *See supra* Part III.b.2 (discussing *Joy v. Daniel*'s extension of due process to require renewal of public housing leases unless there is good cause for termination). Most mobility programs do not incorporate this benefit, although the Rental Demonstration Program does. *See RAD Notice*, *supra* note 119.

301. *See, e.g.*, PUBLIC HOUSING MYTHS, PERCEPTION, REALITY, AND SOCIAL POLICY 26–28, (Nicholas Dagen Bloom & Fritz Umbach, Lawrence J. Vale eds. 2015); Lynne C. Manzo et al., *"Moving Three Times Is Like Having Your House on Fire Once": The Experience of Place and Impending Displacement Among Public Housing Residents*, 45 URB. STUD. J. 1855, 1860 (2007).

302. *See* Michelle Adams, *Separate and (Un)equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 479 (1996); Michelle Adams, *Radical Integration*, 94 CALIF. L. REV. 261, 288–89 (2006).

303. Adams, *Radical Integration*, *supra* note 302, at 264; *see also* Audrey G. McFarlane, *Who Fits the Profile?: Thoughts on Race, Class, Clusters, and Redevelopment*, 22 GA. ST. U. L. REV. 877, 889 (2006) (discussing exclusion based on race and class in urban commercial real estate development).

comparison to boys who did not move,[304] and physical violence and other crimes against non-whites in white neighborhoods are not uncommon.[305] Moreover, relocation may simply be unappealing to those who reject its culturalist implications, including that a successful life depends on assimilating with wealthier people of different races, and on rejecting the community that one already calls home.[306]

e. Thwarting Culturalism

As mobility programs expand, care must be taken to prevent culturalist ideology from undermining their potential. Given how deeply embedded race and class discrimination is in American housing patterns,[307] it will take intense effort to create effective mobility opportunities. Supply must be increased by raising funding, and both sticks and carrots are likely necessary to increase the number of participating landlords and jurisdictions. For example, some cities have prohibited landlords from discriminating on the basis of "type of income" so that all must accept mobility benefits.[308] Such legislative actions are very rare,[309] but may increase due to the newly-revived risk of litigation under the Fair Housing Act.[310]

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304. *See* Ronald C. Kessler, et al., *Associations of Housing Mobility Interventions for Children in High-Poverty Neighborhoods With Subsequent Mental Disorders During Adolescence*, 311.9 JAMA 937, 946–47 (Mar. 5, 2014), http://jama.jamanetwork.com/article.aspx?articleid=1835504.

305. *See* Jeannine Bell, *Can't We Be Your Neighbor? Trayvon Martin, George Zimmerman, and the Resistance to Blacks as Neighbors*, 95 B.U. L. REV. 851 (2015) (documenting and analyzing 430 "anti-integrationist" incidents reported in the news media between 1990 and 2010).

306. *See* Adams, *Radical Integration*, *supra* note 302, at 264, 268 (discussing that "to the extent that integration signals assimilation, integration no longer appeals to many blacks").

307. For an exploration of the ways in which class discrimination permeates land use law, see Audrey G. McFarlane, *Redevelopment and the Four Dimensions of Class in Land Use*, 22 J.L. & POL. 33 (2006).

308. POVERTY & RACE RESEARCH ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM, APP. B: STATE, LOCAL, AND FEDERAL LAWS BARRING SOURCE-OF-INCOME DISCRIMINATION (updated March 2015), http://www.prrac.org/pdf/AppendixB.pdf.

309. *See* MARTHA GALVEZ, POVERTY & RACE RESEARCH ACTION COUNCIL, PROGRAM REVIEW: AN EARLY ASSESSMENT OF OFF-SITE REPLACEMENT HOUSING, RELOCATION PLANNING AND HOUSING MOBILITY COUNSELING IN HUD'S CHOICE NEIGHBORHOODS INITIATIVE 4 (March 2013), http://www.prrac.org/pdf/choiceneighborhoods-affh.pdf.

310. *See supra*, Part V.c.

Recent changes in the law require some mobility programs to offer extensive counseling to increase awareness of the benefits of moving and to help those who wish to move locate units in unfamiliar neighborhoods.[311] However, receiving governments, neighbors, schools, landlords, and employers should also receive counseling, and should be required to affirmatively support mobility, so that the burden of making integration a healthy process is not placed solely on movers. Mobility programs should furthermore assist movers with access to employment, education, childcare, and transportation.

For those who do not desire mobility, it must be recognized that supporting their dignity and autonomy means respecting and supporting that preference, and actively combatting culturalist backlash against them. The risk is that nonparticipators will be stigmatized as failing to seize an opportunity for a better life, unmotivated toward success, and undeserving of alternative options. The culturalist conclusion will be that government need not do anything further to support a decent quality of life for those who remain in poor, minority neighborhoods.

It is imperative to repudiate insinuations that government has met its responsibility to public housing residents by offering, to a small number of poor people, a slight opportunity to flee from other poor people. Resisting this outcome means that advocates and policymakers must not focus on mobility to the exclusion of other housing policies[312]

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311. *See* Dep't of Hous. & Urban Dev., Housing Choice Voucher Program: Streamlining the Portability Process, 80 Fed. Reg. 50,564 (Aug. 13, 2015) (to be codified at 24 C.F.R. pt. 982), http://www.gpo.gov/fdsys/pkg/FR-2015-08-20/html/2015-20551.htm. This final rule applies to the Housing Choice Voucher program, which is a common vehicle for implementing mobility. It requires housing agencies to brief program participants on the benefits of living in wealthier neighborhoods and to provide listings of landlords with properties in such neighborhoods. Such counseling is commonly recommended to make mobility programs more effective. *See, e.g.*, Xavier de Souza Briggs & Margery Austin Turner, *Assisted Housing Mobility and the Success of Low-Income Minority Families: Lessons for Policy, Practice, and Future Research*, 1 NW. J.L. & SOC. POL'Y 25 (2006) (discussing the importance of counseling to the effectiveness of mobility programs). Suits brought by public housing residents have resulted in settlements that include requirements of greater mobility counseling and support. *See, e.g.*, Settlement Agreement and Enforcement Order, Mendonsa v. Lowell Hous. Auth., Civil No. 01-2034 C (Mass. Dist. Ct. June 19, 2008), http://www.povertylaw.org/poverty-law-library/case/54200/54284; Consent Decree, Jones v. HUD, No. 07 C 50142 (N.D. Ill. Jan. 24, 2008).

312. For explorations of how the benefits of integration may be reconciled with support for black identity and community, see Adams, *Radical Integration*, *supra* note 302, at 266; Adams, *Separate and (Un)equal*, *supra* note 302, at 464, 473 (discussing additional "in-place" or "equalization" remedies to racial segregation,

and that other options must be simultaneously pursued. One option is to improve existing public housing through adequate funding and through much more intensive monitoring and enforcement.[313] Another is to significantly expand the Choice Neighborhoods Initiative, which focuses on improving safety and schools in public housing neighborhoods while also preserving long-term housing affordability and keeping existing communities intact.[314] Such "in-place" approaches share a commitment to raising the quality of services while minimizing displacement of the people in that neighborhood. In-place approaches should not only be pursued along with mobility, but should be given at least equal priority.

In sum, mobility programs must be designed to ensure that mobility is truly feasible in order to have any effect on reducing poverty. Equally as important, non-mobility options must enable residents to thrive in place. Mobility must be offered as just one viable option within a larger system of alternatives if dignity, autonomy, and equality are to flourish.

VI. CONCLUSION

This article has sought to highlight culturalism's impact on antipoverty programs, and to demonstrate its power to undermine even those legal rights designed to repudiate it. It discusses past examples of this problem, as well as the present-day risk that housing mobility initiatives may become yet another test of who is worthy and who is not.

One response is to continue to develop laws that promote the dignity, autonomy, and equality of people in poverty. This must occur not just in affordable housing law and in other areas of antipoverty

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including code enforcement, enhanced tenant services, and the improvement of physical conditions, public services, and environmental concerns); Mary Patillo, *Investing in Poor Black Neighborhoods "As Is", in* PUBLIC HOUSING AND THE LEGACY OF SEGREGATION (Margery Austin Turner et al. eds. 2009).

313. *See* Lee, *Rights at Risk*, *supra* note 105.

314. The Choice Neighborhoods Initiative is a relatively small-scale initiative begun in 2010 that, along with Promise Neighborhoods, a program inspired by the Harlem Children's Zone, coordinates between HUD and the Departments of Education, Health and Human Services, Justice, and Treasury and their local counterparts. *See generally* U.S. DEP'T OF HOUS. AND URBAN DEV., CHOICE NEIGHBORHOODS (2015), http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn; Racquel Russell, *Building Neighborhoods of Opportunity*, THE WHITE HOUSE (Jan. 10, 2012, 5:49 PM), https://www.whitehouse.gov/blog/2012/01/10/building-neighborhoods-opportunity.

law, but in other realms as well, including antidiscrimination and constitutional law, business and criminal law, property and tax law, education law, and the law of the political sphere.

Expanded legal rights may not be enough, however. Public housing history illustrates how readily new dignitary rights can be undermined, suggesting that something more is required to diminish culturalism's power. A more fundamental change must occur: society must focus not on changing the beliefs and behavior of poor people, but instead on changing the beliefs and behavior of the non-poor. Achieving such a shift would be a monumental task, but it may be essential to the fight against poverty.